

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Communications Services for Native Nations	)	CG Docket No. 11-41
	)	
	)	

**NOTICE OF INQUIRY**

**Adopted: March 3, 2011**

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**Comment Date: (45 days after publication in the Federal Register)**

**Reply Comment Date: (90 days after publication in the Federal Register)**

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker issuing separate statements.

**TABLE OF CONTENTS**

Heading	Paragraph #
I. INTRODUCTION .....	1
II. BACKGROUND .....	4
III. TOPICS AND QUESTIONS .....	6
A. Native Nations Priority .....	6
1. Background .....	6
2. Discussion .....	8
B. Native Nations Broadband Fund .....	9
1. Background .....	9
2. Discussion .....	10
C. Native Nations Business Models for Deployment .....	12
1. Background .....	12
2. Discussion .....	14
D. Native Nations Adoption and Utilization .....	17
1. Background .....	17
2. Discussion .....	19
E. Defining Tribal Lands .....	21
1. Background .....	21
2. Discussion .....	22
F. Eligible Telecommunications Carrier Designations on Tribal Lands .....	23
1. Background .....	23
2. Discussion .....	28
G. Public Safety and Homeland Security .....	33
1. Background .....	33
2. Discussion .....	37
H. Cultural Preservation and Section 106 of the National Historic Preservation Act .....	46

1. Background.....	46
2. Discussion.....	50
I. Satellite-Based Services.....	56
1. Background.....	56
2. Discussion.....	61
J. Disability Matters in Native Nations.....	67
1. Background.....	67
2. Discussion.....	72
K. Consultation and Coordination with Native Nations .....	73
1. Background.....	73
2. Discussion.....	75
L. General Comments on Issues Unique to Native Nations .....	77
IV. PROCEDURAL MATTERS.....	78
A. <i>Ex Parte</i> Presentations .....	78
B. Comment Filing Procedures.....	80
V. ORDERING CLAUSE .....	85

## I. INTRODUCTION

1. A deep digital divide persists between the Native Nations of the United States and the rest of the country. While most Americans enjoy the communications services of the Internet age, Americans living on Tribal lands – the lands of federally recognized American Indian Tribes and Alaska Native Villages<sup>1</sup> – and Hawaiian Home Lands,<sup>2</sup> usually lack broadband access and many lack even basic telephone service. The Federal Communications Commission (FCC or Commission) has previously observed that “[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.”<sup>3</sup> According to the most recent

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<sup>1</sup> For the purposes of this Notice of Inquiry, the term “Native Nations” refers to federally recognized American Indian Tribes and Alaska Native Villages. The term “Tribe[s] or “Federally recognized Tribe[s]” means any American Indian Tribe or Alaska Native Village, Nation, Band, Pueblo, or Community which is acknowledged by the federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States for Indians. *See The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

<sup>2</sup> We recognize the importance of including Native Hawaiian Home Lands in our Notice of Inquiry. *See Hawaiian Homes Commission Act, 1920*, Act July 9, 1921, 42 Stat. 108, *et seq.*, as amended (Hawaiian Homes Commission Act). While we do not have the same government-to-government relationship with Hawaiian Home Lands as we do with Tribal lands, discussed *infra*, and while any actions we take on this Notice of Inquiry are guided by that distinction, we nevertheless believe that our inquiry may be better informed by the inclusion of Hawaiian Home Lands. Hawaiian Home Lands are lands held in trust for the homesteading of Native Hawaiians, but not necessarily exclusively so. Unlike federal Indian reservations, non-Native entities may obtain leaseholds and entry onto Native Hawaiian Home Lands for the purposes of economic development. *See Hawaiian Homes Commission Act* at §§ 204-210, 220, 220.5, 227.

<sup>3</sup> *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Rule Making, 15 FCC Rcd 11794, 11798 (2000); *see also Connecting America: The National Broadband Plan*, prepared by the staff of the Federal Communications Commission, March 2010 (*National Broadband Plan*) at 152, Box 8-4

comprehensive data, only 67.9 percent of households on Tribal lands have basic telephone service,<sup>4</sup> compared to the national average of approximately 98 percent.<sup>5</sup> Moreover, while there is no solid data on broadband deployment on Tribal lands, availability is estimated at less than ten percent.<sup>6</sup> The lack of robust communications services presents serious impediments to Native Nations' efforts to preserve their cultures and build their internal structures for self-governance, economic opportunity, health, education, public safety, and welfare – in short, to secure a brighter future for their people.

2. Native Nations face unique problems in acquiring communications services, particularly broadband high-speed Internet service. Substantial barriers to telecommunications deployment are prevalent throughout Tribal lands. Those barriers include rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure, limited financial resources to pay for telecommunications services that deter investment by commercial providers, a shortage of technically trained Native Nation members to plan and implement improvements, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands.<sup>7</sup> It is thus not surprising that critical infrastructures rarely have come to Tribal lands without significant federal involvement, investment, and regulatory oversight.<sup>8</sup> The lack of communications services leads to a departure of bright and energetic youth wishing to contribute to their communities, and makes it difficult to attract talented managers with valuable business development experience. Nevertheless, where Native Nations and their community members do have access to broadband, studies indicate that their rates of Internet use are on par with, if not higher than, national averages.<sup>9</sup> Native Nations uniquely know their members and communities. Tribal- or Native-centric business models, which engage this knowledge, either through the Native Nations self-provisioning services or working with others to actively engage their core community institutions and members in deployment and adoption planning, have a greater chance of achieving successful and sustainable services on their Tribal lands.<sup>10</sup>

3. As we move forward into the 21st century and innovations in technology provide new modes of communication, such as broadband, the Commission is committed to ensuring that all Americans have access to emerging services and technologies. Native Nations are at the forefront of our efforts. We issue this Notice of Inquiry (*NOI*) to seek government-to-government consultation and coordination with federally recognized Tribes and the input of inter-Tribal government associations, Native representative organizations, and the public on modifications to our rules and policies to provide

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<sup>4</sup> See *Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands*, Federal Communications Commission (May 2003) (based on data from the 2000 Decennial Census) (*2003 Telephone Subscribership on American Indian Reservations Report*).

<sup>5</sup> See January 2006 GAO Report, *Telecommunications, Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, available at <http://www.gao.gov/new.items/d06189.pdf>. (last visited Jan. 17, 2011) (*January 2006 GAO Report*).

<sup>6</sup> *National Broadband Plan* at 152, Box 8-4 and citations therein.

<sup>7</sup> *January 2006 GAO Report* at 5.

<sup>8</sup> Native Public Media, The National Congress of American Indians, New America Foundation Open Technologies Initiative, and Southern California Tribal Chairman's Association (Joint Native Filers), Ex Parte Comments, GN Docket Nos. 09-47, 09-51, 09-137, Dec. 24, 2009, at 2 (Joint Native Filers Ex Parte Comments).

<sup>9</sup> *Id.* See also Traci L. Morris Ph.D., Native Public Media and Sascha D. Meinrath, New America Foundation, NEW MEDIA, TECHNOLOGY AND INDIAN USE IN INDIAN COUNTRY (Nov. 19, 2009) (*NPM/NAF New Media Study*).

<sup>10</sup> See *infra* Section III.C., Native Nations Business Models for Deployment.

greater economic, market entry, and adoption opportunities and incentives for Native Nations.<sup>11</sup> This *NOI* is being adopted contemporaneously with two other items: the Media Bureau's *Second Report and Order* continues our efforts to enable Native Nations and their entities to build and operate broadcast radio stations serving the needs and interests of Native communities;<sup>12</sup> and the Wireless Telecommunications Bureau's *Notice of Proposed Rulemaking* proposes to amend our rules to spur the provision of vital wireless communications services to Native communities.<sup>13</sup>

## II. BACKGROUND

4. The Commission has long sought to fulfill its statutory purpose to make available to all citizens of the United States access to telecommunications and information services.<sup>14</sup> There are 4.1 million American Indians and Alaska Natives in the United States and more than 565 federally recognized Tribes, each with their own unique political and governance structures.<sup>15</sup> It is well-established that federally recognized Tribes have inherent sovereignty and self-determination, and exercise jurisdictional powers over their members and territory with the obligations to "maintain peace and good order, improve their condition, establish school systems, and aid their people..." within their jurisdictions.<sup>16</sup> In 2000, the Commission formally recognized this sovereignty in its Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes.<sup>17</sup> The Commission reaffirmed the unique legal relationship that exists between the federal government and Tribal

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<sup>11</sup> This *NOI* will provide Tribal leaders, Native Nations, organizations, and other entities with the opportunity to inform the Commission on a number of issues and further develop and expand on recommendations and comments expressed in the National Broadband Plan. See, e.g., *National Broadband Plan* at 152-55, 184-85.

<sup>12</sup> See *Promoting Rural Radio Service and Streamlining Procedures*, MB Docket No. 09-52, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 11-28 (rel. Mar. 3, 2011) (*Rural Radio Tribal Priority Order*).

<sup>13</sup> See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands*, WTB Docket No. 11-40, Notice of Proposed Rulemaking, FCC 11-29 (rel. Mar. 3, 2011) (*Wireless Spectrum Tribal Lands NPRM*).

<sup>14</sup> Communications Act of 1934, as amended, 47 U.S.C. § 151, *et. seq.* (the Act); see also Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The Act mandates that the Commission base its "policies for the preservation and advancement of universal service on [among other principles, that] consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to the rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). In addition, Section 1 of the Act directs the Commission to "regulate interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, nation-wide . . . wire and radio service with adequate facilities at reasonable charges . . . ." The Commission's goal of providing telecommunications services to Tribal lands is also statutorily grounded in other provisions of Act, including Sections 214(e)(3) and (e)(6) and Section 254(i). See also Section 706 of the 1996 Act, codified at 47 U.S.C. § 1302.

<sup>15</sup> Native Public Media and The National Congress of American Indians, Joint Comments, GN Docket Nos. 09-47, 09-51, 09-137, Nov. 9, 2009, at 2 (NPM/NAI Joint Comments).

<sup>16</sup> *Policies to Promote Rural Radio Service and to Streamline Allotments and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1585 (2010) (*Rural Radio Order*) (citations omitted).

<sup>17</sup> Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, 16 FCC Rcd 4078, 4080 (2000) (*Tribal Policy Statement*).

governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.<sup>18</sup>

5. The federal government has a trust relationship with federally recognized Tribes,<sup>19</sup> and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Tribes.<sup>20</sup> In this regard, the federal government has a longstanding policy of promoting Tribal self-sufficiency and economic development, as embodied in various federal statutes.<sup>21</sup> As an independent agency of the federal government, we recognize our own general trust relationship with, and responsibility to, federally recognized Tribes.<sup>22</sup> The Commission also recognizes "the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership."<sup>23</sup> We believe any inquiry into potential solutions to communications deployment challenges on Tribal lands will benefit from the inclusion of Hawaiian Home Lands, as, much like Tribal lands, these lands have a trust status for Native Hawaiians, both as homesteads and for non-Native economic development activities that benefit the Native Hawaiian community.<sup>24</sup> Thus, any approach to deploying communications services, removing barriers to entry, and increasing broadband availability and adoption must recognize Tribal sovereignty, autonomy, and independence, the unique status and needs of Native Nations and Native communities, the importance of consultation with Native Nation government and community leaders, and the critical role of Native anchor institutions.

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<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 315 U.S. 681 (1942)).

<sup>20</sup> See, e.g., *United States v. Mitchell*, 463 U.S. 206 (1983).

<sup>21</sup> See, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968). See also *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

<sup>22</sup> *Tribal Policy Statement*, 16 FCC Red at 4080-81.

<sup>23</sup> *Id.*

<sup>24</sup> *Policy Briefing Memo of the Broadband Priorities of Native Communities on Trust Lands*, Native Hawaiian Policy Center & Council for Native Hawaiian Advancement, June 2010, at pages 7-9. ("In 1920, relying in part on the precedent of the General Allotment Act, which provided individual lands for American Indians under Federal protections, Congress enacted the Hawaiian Homes Commission Act to rehabilitate the Native Hawaiian people by setting aside for Native Hawaiian settlement and agriculture use 200,000 acres of the 'ceded' lands, i.e. the former Crown and public lands of the Kingdom of Hawaii. The legislative history of the Act makes clear that Congress considered Native Hawaiians to be Hawaii's indigenous peoples, and sought to extend towards Native Hawaiians, federal policies similar to that of American Indians and Alaska Natives ... As a condition of Statehood in 1959, the State of Hawaii agreed to take over the administration of the Hawaiian Homes Commission Act. In 1960, the Department of Hawaiian Homelands (DHHL) was created to administer the Hawaiian Home Lands trust. The United States maintains its trust responsibility through Section 4 of the Hawaii Admissions Act, which requires United States consent to certain amendments made to the Hawaiian Homes Commission Act.") (citing from *Mauka to Makai, The River of Justice Must Flow Freely*, U.S. Departments of Justice and the Interior, Draft Report, October 2000, and citing House Committee on Territories, Rehabilitation and Colonization of Hawaiians...(citation abridged), H.R. Doc. No. 839, 66<sup>th</sup> Cong., 2d Sess. at 4 (1920)).

### III. TOPICS AND QUESTIONS

#### A. Native Nations Priority

##### 1. Background

6. In the *Rural Radio Order*, the Commission established a Tribal Priority in allocating and assigning broadcast radio channels.<sup>25</sup> Specifically, the Commission adopted a Tribal Priority under Section 307(b) of the Communications Act, which governs the allocation of radio licenses to “provide a fair, efficient, and equitable distribution of radio service” to states and communities.<sup>26</sup> The record in the proceeding reflected that several Tribal groups had expressed concern about their ability to establish radio service to their own people, communities, and Tribal lands.<sup>27</sup> Recognizing that only 41 radio stations were licensed to federally-recognized Tribes or affiliated groups, representing less than one-third of one percent of the more than 14,000 radio stations in the United States, the Commission concluded that the establishment of a Tribal priority would “advance our Section 307(b) goals and serve the public interest by enabling Indian [T]ribal governments to provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.”<sup>28</sup> The Commission also stated its belief in the importance of “a robust and meaningful opportunity for Tribes to pursue commercial licensing opportunities and to determine, over time, how commercial stations can best serve [T]ribal needs.”<sup>29</sup>

7. The Commission found that a Tribal Priority advanced the Commission’s longstanding commitment “to work with Indian Tribes on a government-to-government basis ... to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.”<sup>30</sup> Because of their status as sovereign nations responsible for, among other things, “maintaining and sustaining their sacred histories, languages, and traditions,” Tribes have a vital role to play in serving the needs and interests of their local communities.<sup>31</sup> Emphasizing the historic federal trust relationship between itself and the Tribes, and the ability of the Commission to create the Tribal Priority based on the constitutional classification<sup>32</sup> of Tribes as governmental entities,<sup>33</sup> the Commission limited eligibility for the Tribal Priority to Tribes and entities

<sup>25</sup> See *Rural Radio Order*, 25 FCC Rcd at 1587.

<sup>26</sup> See 47 U.S.C. § 307(b).

<sup>27</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, Notice of Proposed Rulemaking, 24 FCC Rcd 5239, 5248 n.30 (2009) (*Rural Radio NPRM*) (citing comments from Native Public Media).

<sup>28</sup> *Rural Radio Order*, 25 FCC Rcd at 1588.

<sup>29</sup> *Id.* at 1591.

<sup>30</sup> *Id.* at 1588 (citing *Tribal Policy Statement*, 16 FCC Rcd at 4079).

<sup>31</sup> *Id.* at 1587-88 (citations omitted).

<sup>32</sup> See U.S. CONST. art. I, § 8, cl. 3. See also U.S. CONST. art. II, § 2, cl. 2.

<sup>33</sup> *Rural Radio Order*, 25 FCC Rcd at 1590 (“...the priority established herein for the benefit of federally recognized Tribes is not constitutionally suspect because it is based on ‘the unique legal status of Indian tribes under Federal law.’” (citing *Morton v. Mancari*, 417 U.S. 535, 551-52 (1974))). The Commission further found that “[a]s the D.C. Circuit explained in 2003, the Supreme Court’s decisions leave no doubt that federal government action directed at Indian tribes, ‘although relating to Indians as such, is not based on impermissible racial classifications.’” *Id.* (citing *American Federation of Government Employees, and AFL-CIO v. U.S.*, 330 F.3d 513, 523 (D.C. Cir. 2003), cert. denied, 540 U.S. 1088 (2003)). In *American Federation of Government Employees*, the Court held that “[its] decisions ‘leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is

(continued...)



majority-owned by Tribes and proposing to serve Tribal lands.<sup>34</sup>

## 2. Discussion

8. We seek comment on whether a Native Nations priority, analogous to the one adopted in the *Rural Radio Order*, should be adopted to make it easier for Native Nations to provide other communications services, such as wireless, wireline, or satellite services, to their communities. Are there other Commission rules that, either directly or indirectly, impose barriers to entry for Native Nations seeking to provide communications services to their communities? If so, would it be in the public interest to provide federally recognized Tribes with a priority in those contexts in an effort to lower barriers to entry and facilitate the entry of Native Nation-owned and/or controlled providers? We ask commenters to cite specific Commission rules, identify how those rules present barriers to entry, and describe the impact of those barriers to entry on Native Nation governments, service providers, and Native communities. We also ask commenters to specifically identify and describe the public interest benefits – whether economic, social, or other – that would result from additional Native Nation priorities. Can such a priority, or similar mechanism, be applied to Hawaiian Home Lands? Finally, we seek comment on how such Native Nations priorities should be structured and any specific requirements and/or obligations that should be imposed on the beneficiaries of such priorities.

### B. Native Nations Broadband Fund

#### 1. Background

9. Recognizing that Tribal lands face unique challenges and significant obstacles to the deployment of broadband infrastructure, the National Broadband Plan states that Native Nations need substantially greater financial support than is presently available through existing federal programs to accelerate broadband deployment on Tribal lands.<sup>35</sup> As a result, the Plan recommends that Congress consider establishing a Native Nations Broadband Fund to support sustainable broadband deployment and adoption on Tribal lands.<sup>36</sup> The Plan notes that grants from a new Native Nations Broadband Fund could be used for a variety of purposes, including bringing high-capacity connectivity to governmental headquarters or other anchor institutions, deployment planning, infrastructure build out, feasibility studies, technical assistance, business plan development and implementation, digital literacy, and outreach.<sup>37</sup> In addition, the National Broadband Plan recommends that a portion of the Native Nations Broadband Fund provide small, targeted grants on an expedited basis for Internet access and adoption programs.<sup>38</sup> The Plan also recommends that the National Telecommunications and Information

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not based on impermissible racial classifications.’ ” *Id.* (quoting *United States v. Antelope*, 430 U.S. 641, 645 (1977) (“federal regulation of Indian affairs is not based upon impermissible classifications. Rather, such regulation is rooted in the unique status of Indians as ‘a separate people’ with their own political institutions.”))

<sup>34</sup> *Rural Radio Order*, 25 FCC Rcd at 1596. Majority ownership or control in this context is defined as more than 51 percent Tribal ownership or control. See 47 C.F.R. § 73.7000. Among other requirements, the *Rural Radio Order* stated that at least 50 percent of the principal community contour of the proposed radio facilities must cover Tribal lands (with the proviso that those lands need not all be the same Tribe’s lands) and imposed additional obligations on recipients of the Tribal Priority. *Rural Radio Order*, 25 FCC Rcd at 1596-97.

<sup>35</sup> *National Broadband Plan* at 152.

<sup>36</sup> *Id.* at Recommendation 8.18.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

Administration (NTIA) administer the Native Nations Broadband Fund, in consultation with the Commission and the Bureau of Indian Affairs (BIA), and that all federal agencies seeking to upgrade connectivity on Tribal lands coordinate such upgrades with Native Nations and the Native Nation Broadband Fund grant-making process.<sup>39</sup>

## **2. Discussion**

10. We seek input and comment on a number of issues associated with establishment of a Native Nations Broadband Fund.<sup>40</sup> First, we seek comment on the need for a Native Nations Broadband Fund. We ask commenters to specifically articulate whether they believe such a fund is necessary and, if so, to explain why it is necessary and provide supporting data. We also seek comment on the requirements for a Native Nations Broadband Fund. For example, are the purposes for which such a fund would be used as recommended in the National Broadband Plan comprehensive enough or overly broad? Are there additional components that commenters believe should be included? We ask commenters to be as specific as possible in analyzing the components recommended in the Plan and in recommending changes and/or additional components that would be critical to the establishment of a Native Nations Broadband Fund.

11. We also seek comment on other issues associated with a Native Nations Broadband Fund. For example, in light of the Tribes' experience with Recovery Act funding<sup>41</sup> through the Broadband Initiatives Program (BIP)<sup>42</sup> and the Broadband Technology Opportunities Program (BTOP),<sup>43</sup> are there lessons learned that could inform the establishment of a Native Nations Broadband Fund, both in terms of administration and purposes? What level of funding is necessary to fulfill the purposes identified in the National Broadband Plan and how should it be allocated and administered? To what extent should the Native Nations Broadband Fund provide support for new market entry development and deployment? Should this fund be prioritized to presently unserved Tribal lands? Are there administrative issues that, if addressed at the establishment phase, would make implementation of a Native Nations Broadband Fund more efficient, cost-effective, and accessible to potential beneficiaries on Tribal lands? What entity or entities should administer such a fund? Finally, given current fiscal constraints on the federal government, are there alternative ways to accomplish the goals set forth in the National Broadband Plan without such a fund?

## **C. Native Nations Business Models for Deployment**

### **1. Background**

12. Native Nations are intimately acquainted with their members' needs and have valuable insight into how to meet them. While critical infrastructures have rarely come to Tribal lands without significant federal involvement, investment, and oversight, Native Nations have taken different

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<sup>39</sup> *Id.*

<sup>40</sup> We acknowledge that, although there is no express statutory authority to create a Native Nations Broadband Fund, the Commission may be able to create or otherwise provide support within its current statutory authority.

<sup>41</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009) (Recovery Act).

<sup>42</sup> BIP is administered by the Rural Utilities Service (RUS) of the United States Department of Agriculture. See <http://broadbandusa.sc.gov.usda.gov/BIPportal/index.htm>. (last visited Jan. 24, 2011).

<sup>43</sup> BTOP is administered by the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce. See <http://www2.ntia.doc.gov>. (last visited Jan. 24, 2011).



approaches to economic development.<sup>44</sup> “Tribal-centric” business models – those that actively engage the Native Nation, its core community institutions, and members in deployment and adoption planning – have a greater chance of establishing sustainable services on Tribal lands.<sup>45</sup> Utilizing this approach, a number of Native Nations have successfully established service providers that have deployed critical communications infrastructure on their lands. In the telecommunications context, for example, eight Tribally-owned and operated local exchange carriers and one wireless provider have sought and received eligible telecommunications carriers (ETC) status on their Tribal lands.<sup>46</sup> These Native Nation-owned ETCs, which comprise the National Tribal Telecommunications Association, with the help of universal service funds and other federal funds, have been able to develop successful business models, deploy telecommunications networks, and provide services at levels previously unseen to their communities. In the media context, KUYI (88.1 FM), also known as Hopi Radio, has been providing news, entertainment, and language and cultural preservation to the Hopi community for over 10 years. Among KUYI’s goals are “communicat[ing] Native issues and programs in order to improve an understanding and appreciation of indigenous cultures” and “creat[ing] and maintain[ing] a local outlet and production capability for statewide and national public radio programming with particular emphasis on Hopi perspectives and interests.”<sup>47</sup>

13. In the National Broadband Plan docket, the National Congress of American Indians and Native Public Media jointly submitted a 2009 study of Native communities conducted by Native Public Media and the New America Foundation, whose purpose was to understand Native use of broadband technologies in building sustained, healthy, engaged, and independent Native communities.<sup>48</sup> The three-part *NPM/NAF New Media Study* included: (1) a survey of members of 120 Tribes in 28 states concerning their access to broadband on Tribal lands; (2) six case studies related to new media in Indian Country, four of which focused on broadband deployment projects; and (3) a number of recommendations

<sup>44</sup> See, e.g., Cornell, Stephen and Joseph P. Kalt, “Two Approaches to the Development of Native Nations: One Works, the Other Doesn’t,” in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT*, University of Arizona Press (2008).

<sup>45</sup> See generally National Tribal Telecommunications Association, Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, July 12, 2010 (NTTA Comments). See also Joint Native Filers Comments at 4.

<sup>46</sup> The eight Tribally-owned local exchange carriers with ETC designations are: Hopi Telecommunications, Inc. (Hopi Tribe); San Carlos Telecommunications and Utilities, Inc. (San Carlos Apache Tribe); Mescalero Apache Telecommunications, Inc. (Mescalero Apache Tribe); Gila River Telecommunications, Inc. (Gila River Indian Community); Saddleback Communications (Salt River Pima Maricopa Indian Tribe); Fort Mojave Telecommunications, Inc. (Fort Mojave Indian Tribe); Tohono O’odham Utility Authority (Tohono O’odham Nation); and Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River Sioux Tribe). The Commission performed the majority of these ETC designations. Mescalero Apache Telecommunications, Inc. received its ETC designation from the New Mexico Public Regulatory Commission. Standing Rock Telecommunications, Inc. (Standing Rock Sioux Tribe) is the Tribally-owned wireless company, and received its ETC designation from the Commission. Some issues related to Standing Rock’s ETC designation remain under review at the Commission. See, e.g., *Comment Sought on Whether Standing Rock Telecommunications, Inc. Should Be Designated An ETC in Partial Rural Wire Centers So It Can Serve the Entire Standing Rock Sioux Reservation*, WC Docket No. 09-197, Public Notice, DA 10-1602 (rel. Aug. 24, 2010); *Comment Sought on Standing Rock Telecommunications, Inc.’s Petition for Reconsideration of the Standing Rock ETC Designation and Redefinition Order*, WC Docket No. 09-197, Public Notice, DA 10-1988 (rel. Oct. 15, 2010).

<sup>47</sup> See <http://www.kuyi.net/about-kuyi> (last visited Jan. 24, 2011). KUYI Hopi Radio is run by a small station staff and many volunteers, and serves the Hopi Reservation, Flagstaff, Tuba City, Winslow, and the I-40 corridor in Arizona. In June 2010, KUYI went live online. See [www.kuyi.net/listen-live](http://www.kuyi.net/listen-live) (last visited Jan. 24, 2011).

<sup>48</sup> See generally *NPM/NAF New Media Study*.

for fostering broadband deployment and use in Indian Country.<sup>49</sup> The qualitative case study analysis contained in the second part of the *NPM/NAF New Media Study* contains information critical to our exploration of successful business and deployment models on Tribal lands, including such factors as design and management, use of technology, financing information, the array of end-user services, and community impact.<sup>50</sup>

## **2. Discussion**

14. We seek comment and additional information on the basic tools that Native Nations need in order to effectively build sustainable business and deployment models to address the significant communications infrastructure needs (including the road system), market challenges, and demand aggregation requirements specific to Tribal lands. For example, the providers of telecommunications and broadcast services that are owned and operated by Native Nations themselves took concrete steps to prepare for the daunting task of providing communications services to their communities. We seek comment on, for instance, what specific steps those providers took in developing a business case for the provision of service; engaging Native Nation leaders in that process and receiving their affirmative approval; securing the capital, financing, equipment, and other infrastructure components necessary to implement their business plans; and implementing the business plan and deploying services. Were there any Commission rules that served as barriers to entry or otherwise provided obstacles or significant challenges to the provision of service by Native Nations to their own communities?

15. We also seek comment on the extent to which deployment on their lands is hampered by conditions that are present both on and outside of the Native Nation's own lands. For example, is distance from other infrastructure a factor that is prevalent on Tribal lands and presents a barrier to deployment? Do business models for deployment suffer because costs on Tribal lands are higher, and expected revenue lower? Are there factors that present challenges to deployment specific to Hawaiian Home Lands? We seek comment on how these factors operate, either in combination or separately, to exacerbate the challenge to deploying communications services on Tribal lands and Hawaiian Home Lands.

16. We ask commenters to be as specific as possible in outlining the process of developing a business case for the deployment of service and in identifying Commission rules or policies that either facilitated or impeded that process. Are there common successful demand aggregation techniques that Native Nations have employed? Are there best practices that Native Nations seeking to become service providers on their own lands should undertake? Are there anchor institutions that are particularly important to communications services deployment planning on Tribal lands? Is there a "Tribal-centric" approach to developing the business case model that is essential to the eventual success of that model, and what characterizes such an approach? We also seek comment on what unique challenges and issues Native Nations without significant land holdings may face in the development of needed infrastructure and provision of communications services.

## **D. Native Nations Adoption and Utilization**

### **1. Background**

17. Communities on Tribal lands historically have experienced far less access to telecommunications services than any other segment of the population, and this situation has been particularly acute in the broadband context. The telephone penetration rate on Tribal lands is 67.9

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

percent,<sup>51</sup> while the broadband availability rate is less than 10 percent.<sup>52</sup> The exact rate of broadband adoption or subscribership, however, is unknown, in part because there has not been a comprehensive federal survey to date that has focused on collecting subscribership information on Tribal lands.<sup>53</sup> However, limited research has revealed that, where Native Nations have access to broadband, their members' rates of Internet use are the same as, if not greater than, the national average.<sup>54</sup> These findings suggest that, if infrastructure build-out is achieved, consumers and members of Native Nations will strive to adopt and utilize the Internet.

18. The National Broadband Plan cited a number of barriers to broadband adoption and utilization for all consumers, including cost, digital literacy, relevance, and accessibility.<sup>55</sup> The Plan recommended a series of guiding principles for broadband adoption and utilization, including: focusing on barriers to adoption; focusing on broadband in the home; promoting connectivity across an entire community; promoting broadband utilization; planning for changes in technology; measuring and adjusting adoption plans; and forming partnerships across stakeholder groups.<sup>56</sup> The Plan also made a number of recommendations to address the cost, digital literacy, relevance, and accessibility barriers to broadband adoption and utilization.<sup>57</sup>

## 2. Discussion

19. We seek comment on the challenges faced by Native Nations in achieving broadband adoption and utilization. For example, do the barriers identified in the National Broadband Plan represent a comprehensive assessment of the barriers to adoption and utilization that exist on Tribal lands and Hawaiian Home Lands? Alternatively, are there different and/or additional barriers that are unique to Tribal lands and Hawaiian Home Lands? What role do, or should, anchor institutions such as schools, libraries, health care facilities, and Native Nation offices, play in the deployment and subsequent adoption and utilization of broadband on Tribal lands? Are the universal service schools and libraries program, or E-rate, community use rules being used on Tribal lands and, if so, how have the rules made a positive impact on adoption and utilization?<sup>58</sup> What impact has telemedicine had on Tribal lands, or what impact could it have if widely available in Native communities? What other types of anchor institutions on Tribal lands play an important role in adoption and utilization by the members of Native Nations? We seek comment on adoption models that have worked on Tribal lands, as well as models that have failed to achieve widespread adoption and utilization of broadband. Are there, for example, Tribal-centric models that have succeeded? If so, we seek comment on how those models work and the levels of adoption and utilization that they have achieved on Tribal lands. We also seek comment on whether there is any data available regarding broadband adoption and utilization within particular Native Nations and, if so, we ask

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<sup>51</sup> See *2003 Telephone Subscribership on American Indian Reservations Report*.

<sup>52</sup> See *National Broadband Plan* at 152, Box 8-4 and citations therein.

<sup>53</sup> Joint Native Filers Ex Parte Comments at 2.

<sup>54</sup> See generally *NPM/NAF New Media Study*.

<sup>55</sup> *National Broadband Plan* at 168-69.

<sup>56</sup> *Id.* at 171.

<sup>57</sup> *Id.* at 171-82.

<sup>58</sup> See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18774, at para. 22 (2010) (allowing schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by the E-rate program).

commenters to identify the source(s) of that data.

20. We also seek comment on the appropriate role of government in spurring sustainable broadband adoption on Tribal lands and Hawaiian Home Lands. For example, how can the federal government work most effectively with Native Nations to facilitate broadband adoption and utilization planning? What should be the role of public-private partnerships involving federal and Native Nations and non-profit community and private industry partners in supporting widespread broadband adoption and utilization on Tribal lands? Are there specific Commission rules that either help or impede broadband adoption and utilization on Tribal lands?

#### **E. Defining Tribal Lands**

##### **1. Background**

21. The Commission's rules currently reference several different definitions of Tribal lands.<sup>59</sup> For example, in determining eligibility for the universal service enhanced Lifeline and Link Up programs, Tribal lands are encompassed within the definition of "reservation," which in turn is defined as "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments."<sup>60</sup> In establishing priorities for radio licenses, Tribal lands are defined to include "American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Hawaiian [Home Lands], and Alaska Native Village Statistical Areas, as well as the communities situated on such lands."<sup>61</sup>

##### **2. Discussion**

22. We seek comment on whether the Commission should consider adopting a single definition of Tribal lands for all communications-related regulation and, if so, precisely what that definition should encompass.<sup>62</sup> For example, should the definition broadly encompass American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Hawaiian Home Lands, and Alaska Native Village Statistical Areas, as is the case in the media context

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<sup>59</sup> See, e.g., *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794 (2000); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc., Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (*Twelfth Report and Order*), recon. by *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003) (*Tribal Recon. Order*); *Rural Radio Order*, 25 FCC Rcd 1583.

<sup>60</sup> 47 C.F.R. § 54.400(e). The Commission uses the same definition of Tribal lands for purposes of the Tribal Lands Bidding Credit. See *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd at 11796 n.1.

<sup>61</sup> See *Rural Radio Order*, 25 FCC Rcd at 1587, n.15. See also *Rural Radio Tribal Priority Order*, FCC 11-28.

<sup>62</sup> We note that, for some purposes, we may be constrained by statute as to the definition of Tribal lands that we may adopt. For example, the National Historic Preservation Act defines "Tribal lands" as "(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities." 16 U.S.C. § 470w(14); see also 36 C.F.R. § 800.16(x) (regulations of the Advisory Council on Historic Preservation).

today? Alternatively, should the definition be more narrowly tailored to reservations, as defined in the universal service context? Should the Commission include a provision in the definition of Tribal lands that would encompass Tribes without significant land holdings? If so, we ask commenters to detail what such a provision would entail. We also seek comment on the broader question of how the Commission's policies designed to bring communications services to Native Nations could be designed to benefit members who do not live on Tribal lands.

## **F. Eligible Telecommunications Carrier Designations on Tribal Lands**

### **1. Background**

23. The Act seeks to ensure that low-income consumers and those in rural, insular, and high-cost areas have access to services that are reasonably comparable to those enjoyed by urban consumers at reasonably comparable rates.<sup>63</sup> A telecommunications carrier must be designated as an eligible telecommunications carrier (ETC) and must offer services throughout its entire service area in order to receive universal service support through the high-cost and low-income programs.<sup>64</sup> Although state commissions have primary responsibility for designating ETCs,<sup>65</sup> that responsibility shifts to the Commission for carriers "providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>66</sup>

24. In 2000, the Commission established a two-step framework for designating ETCs on Tribal lands.<sup>67</sup> The process involves the Commission first determining whether a state commission or the Commission itself has jurisdiction to designate an ETC on a specific Tribal land.<sup>68</sup> In this particularized inquiry, the Commission determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Native Nation's authority given the nature of the Native Nation's governmental interests involved. In the second step of the process, when the Commission has jurisdiction to designate the carrier as an ETC,<sup>69</sup> it proceeds to consider the merits of the carrier's petition for designation.<sup>70</sup> To date, the Commission has designated as ETCs several telecommunications carriers

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<sup>63</sup> 47 U.S.C. § 254(b)(3).

<sup>64</sup> 47 U.S.C. § 254(e) (stating that only an ETC is "eligible to receive specific Federal universal service support"). The low-income program is more widely known as Lifeline and Link Up. Service providers seeking universal service support through the schools and libraries program (otherwise known as E-rate) and the rural health care program need not be designated as ETCs. See 47 C.F.R. §§ 54.501, 54.516 (the E-rate program); §§ 54.603, 54.621 (the rural health care program).

<sup>65</sup> 47 U.S.C. § 214(e)(2); see *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

<sup>66</sup> 47 U.S.C. § 214(e)(6); see, e.g., *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

<sup>67</sup> See generally *Twelfth Report and Order*, 15 FCC Rcd 12208.

<sup>68</sup> *Id.* at 12265–69, paras. 115–27; *Tribal Recon. Order*, 18 FCC Rcd at 10964 n.28.

<sup>69</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12266–12267, paras. 120–22.

<sup>70</sup> *Id.* at 12265, para. 115.

owned and operated by Native Nations.<sup>71</sup>

25. The National Broadband Plan recommended that “Tribal governments should play an integral role in the process for designating carriers who may receive [universal service] support to serve Tribal lands.”<sup>72</sup> For example, the Plan recommended that the ETC designation process should require consultation with the Native Nation after a carrier files a petition to serve a particular Tribal land area and also should require the carrier to file a plan with both the Commission (or the state, in those cases in which the carrier is seeking ETC designation from the state) and the Native Nation on proposed plans to serve the area.<sup>73</sup>

26. The universal service low-income program is comprised primarily of two components – Lifeline and Link Up.<sup>74</sup> Lifeline reimburses ETCs for discounting eligible low-income consumers’ monthly bills for basic, local telephone service.<sup>75</sup> Link Up reimburses ETCs for discounting connection charges incurred when an eligible low-income consumer commences service for the first time or at a new address.<sup>76</sup> The Commission’s rules provide for enhanced, or additional, Lifeline and Link Up support for ETCs serving eligible low-income consumers living on Tribal lands. That is, Tier 4 of Lifeline support provides up to an additional \$25 per month discount on telephone service for eligible residents of Tribal lands,<sup>77</sup> while Link Up provides up to an additional \$70 reduction in connection charges for eligible residents of Tribal lands.<sup>78</sup> A number of carriers have sought and received ETC designation for the purpose of participating in the Lifeline program only.<sup>79</sup> We note that today the Commission adopted a

<sup>71</sup> See, e.g., *Federal-State Joint Board on Universal Service, Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona*, CC Docket No. 96-45, Order, 22 FCC Rcd 1866 (2007).

<sup>72</sup> *National Broadband Plan* at 146, Recommendation 8.5.

<sup>73</sup> *Id.*

<sup>74</sup> Eligible low-income consumers are also eligible for Toll Limitation Service support, which reimburses ETCs for providing toll blocking and toll control at no cost to the customer. See 47 C.F.R. § 54.401(a)(3).

<sup>75</sup> See 47 C.F.R. § 54.401.

<sup>76</sup> See 47 C.F.R. § 54.411.

<sup>77</sup> See 47 C.F.R. § 54.403(a)(4). Tier One is available to all eligible Lifeline subscribers and is equal to the incumbent ETC’s subscriber line charge (currently capped at \$6.50 per month). *Id.* at § 54.403(a)(1). Tier Two is an additional \$1.75 per month, available if the ETC agrees to pass through the full amount of the discount to the consumer. *Id.* at § 54.403(a)(2). Tier Three is up to an additional \$1.75 per month, based on whether the state or carrier has contributed additional support. *Id.* at § 54.403(a)(3). That is, the maximum federal Lifeline discount available to eligible low-income consumers not residing on Tribal lands is \$10 per month, while the maximum federal discount available to eligible low-income consumers residing on Tribal lands is \$35 per month.

<sup>78</sup> See 47 C.F.R. § 54.411(a)(3). All eligible low-income consumers are eligible to receive a Link Up discount amounting to one-half of the customary telephone connection charge, up to a maximum of \$30. The maximum federal Link Up discount available to eligible low-income consumers residing on Tribal lands, therefore, is \$100.

<sup>79</sup> See, e.g., *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York, the State of Florida, the Commonwealth of Virginia, the State of Connecticut, the Commonwealth of Massachusetts, the State of Alabama, the State of North Carolina, and the State of Tennessee; Petitions for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service to Qualified Households in the State of Delaware, New Hampshire, the Commonwealth of Pennsylvania, and the District of Columbia*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (TracFone ETC Designation Order); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York and the* (continued...)



Notice of Proposed Rulemaking in which we seek comment on a number of proposals to reform and modernize the Lifeline and Link Up programs.<sup>80</sup>

27. A major objective of high-cost universal service support historically has been to help ensure that consumers have access to telecommunications services in areas where the cost of providing such services would otherwise be prohibitively high.<sup>81</sup> Currently, the Commission's rules provide federal high-cost support to non-rural and rural carriers under different support mechanisms.<sup>82</sup> While rural carriers receive support based on their embedded costs, support to non-rural carriers is based on the forward-looking economic cost of constructing and operating the network, as determined by the Commission's cost model.<sup>83</sup> Last month, the Commission adopted the *Connect America Fund Notice of Proposed Rulemaking*, in which we sought comment on issues affecting Native Nations.<sup>84</sup>

## 2. Discussion

28. We seek comment on a number of issues related to ETC designation on Tribal lands. First, we seek comment on how specific an ETC designation including Tribal lands should be. For carriers seeking ETC designation for the sole purpose of participating in the low-income program, for example, should the ETC designation make clear that a carrier is authorized to provide Lifeline and/or Link Up on Tribal lands? If so, should the ETC designation specifically identify the Tribal land(s) included in the designation? In cases in which the ETC designation is silent with respect to the inclusion of Tribal lands, should there be a presumption that a carrier is not authorized to receive universal service support for serving low-income consumers living on those lands?

29. For carriers seeking ETC designation for the purpose of participating in both the high-

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*Commonwealth of Virginia; Petitions for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina and the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Order*).

<sup>80</sup> *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 11-32 (rel. Mar. 3, 2011).

<sup>81</sup> See, e.g., *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, (2010) (*Qwest II Remand Order and MO&O*); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21325-26, para. 5 (1998) (*Fifth Report and Order*).

<sup>82</sup> The term "non-rural carriers" refers to incumbent local exchange carriers that do not meet the statutory definition of a rural telephone company. See 47 U.S.C. § 153(37). Under section 153(37), rural telephone companies are defined as incumbent carriers that either serve study areas with fewer than 100,000 access lines or meet one of three alternative criteria. *Id.*

<sup>83</sup> See *Qwest II Remand Order and MO&O*, 25 FCC Rcd at 4075, para. 7. See also *Fifth Report and Order*, 13 FCC Rcd at 21324, para. 2.

<sup>84</sup> See *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket Nos. 07-135, 05-337, CC Docket Nos. 01-92, 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

cost and the low-income programs, we seek comment on whether the ETC designation process should be the same or different than the process for carriers seeking only to participate in the low-income program. That is, does the fact that the current high-cost program provides support to carriers based either on their individual costs or costs generated from the Commission's model, rather than support for individual discounts to consumers, weigh in favor of more specific ETC designations on Tribal lands? We also seek comment on whether any such requirements, whether for ETC designations for the purpose of participating in the high-cost and low-income programs, or alternatively for the purpose of participating in the low-income program alone, should apply to ETC designations conducted by both the Commission and the states.

30. Second, we seek comment on whether additional requirements should be imposed on carriers seeking ETC designation on Tribal lands. For example, is it sufficient for carriers seeking designation, either from the Commission or the state, to file a proposed plan to serve with the Native Nation government upon filing an ETC petition, as recommended in the National Broadband Plan? Should carriers also be required to engage with the Native Nation in advance of any such filing?<sup>85</sup> What should be included in any plan to serve filed by the carriers with the Native Nation, the Commission, and/or the state? We ask commenters to be as specific as possible in providing details about a proposed process.

31. Third, we seek comment on the nature of consultation with Native Nation governments that should be included in the ETC designation process. The National Broadband Plan recommends that they have an "integral role" in the ETC designation process. What should be the nature of that role? We seek comment on the specific elements of the designation that should be included in the consultation with Native Nations. For example, what aspects of the jurisdictional analysis, service offering and advertising of supported services, public interest analysis, designated service area, and regulatory oversight requirements should be included in this consultation process?<sup>86</sup>

32. Fourth, with respect to ETC designations for the sole purpose of participating in the low-income program, we seek comment on whether varying amounts of Lifeline support could be available on Tribal lands. That is, as detailed above, Tier Four Lifeline support provides up to an additional \$25 per month to reduce the cost of telephone service for eligible low-income consumers living on Tribal lands. We seek comment on whether there are situations in which Tier Four support should not be available on Tribal lands. For example, are there carriers that should not be permitted to collect Tier Four support if they serve eligible low-income consumers on Tribal lands? Should ETC designations be specific with regard to which tiers of Lifeline support are available, and should there be a requirement that such designations specifically state whether the carrier will be permitted to collect Tier Four support?

## **G. Public Safety and Homeland Security**

### **1. Background**

33. Our commitment to ensure that residents of Tribal lands have access to modern telecommunications services and share in the benefit of the broadband revolution extends to the area of public safety and emergency communications. For example, in our ongoing public safety proceedings relating to such issues as public safety broadband interoperability and Next Generation 911 service, we have recognized the importance of ensuring that Native communities are included in and benefit from

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<sup>85</sup> See NTTA Comments at 24.

<sup>86</sup> See Section K of this NOI for a further discussion of the consultation process.

these initiatives.<sup>87</sup> Nevertheless, we have not previously examined the full range of public safety communications issues from the Native Nation perspective. Accordingly, in this *NOI*, we initiate a comprehensive examination of how public safety and emergency communications are provided to residents of Tribal lands and solicit comment on how the Commission can assist, to ensure that Native communities have access to ubiquitous, effective, and high-quality emergency communications services. We recognize that, as with other communications services, effective and efficient deployment of public safety and emergency communications should be “Tribal-centric” to the fullest extent possible in order to address the specific circumstances of each Native Nation. In addition, deploying public safety and emergency communications to serve Tribal lands raises complex issues because of the need for coordination and interoperability with a number of federal, state, local, and Tribal government agencies.

34. Native Nations face unique challenges in obtaining effective, or in some cases, even minimal delivery of public safety and emergency communications services. One contributing factor to these challenges appears to be the lack of a coordinated approach to Native public safety communications at any level of government. Instead, the current provision of public safety communications on Tribal lands involves a complicated array of government agencies with overlapping responsibility for different public safety communications functions that also may vary depending on the particular Native Nation in question. For example, law enforcement-related communications for many Native Nations are provided by the United States Department of Interior (DOI) – either through BIA or under the auspices of the Assistant Secretary for Indian Affairs.<sup>88</sup> For these purposes, BIA operates a land mobile radio system covering a substantial portion of Tribal lands, which are largely the same areas where BIA provides Native law enforcement services. Other Native Nations, however, provision their own law enforcement radio systems under licenses issued by the Commission, or are covered by state or local law enforcement systems.<sup>89</sup> Moreover, even in those areas where BIA provides land mobile service to Native Nations, it typically does not assume responsibility for their 911 services. Finally, in the recently enacted Tribal Law and Order Act of 2010, the Office of Justice Services in the Department of Justice was tasked with responsibility for “the development and provision of dispatch and emergency and E-911 services” in Indian country.<sup>90</sup>

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<sup>87</sup> For example, in our May 2010 order granting waivers for early deployment of 700 MHz public safety broadband networks, we required waiver recipients to be capable of supporting roaming by future regional, state, Tribal, and local public safety broadband systems. *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, PS Docket 06-229, Order, 25 FCC Rcd 5145, 5160, para. 45 (2010). More recently, we noted the possibility of tribal broadband networks participating in a network-of-networks architecture in the 700 MHz public safety broadband spectrum, and sought comment on how to foster interconnectivity and interoperability among such networks. *See generally Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, Third Report and Order and Fourth Notice of Proposed Rulemaking, 26 FCC Rcd 733, 741-745, paras. 18-42 (2011) (*Public Safety Broadband Interoperability Order/FNPRM*). Similarly, in our recent Notice of Inquiry on Next Generation 911 services, we sought comment on the proper role of Tribal governments as well as other federal, state, and local governments in developing NG911 elements and facilitating the transition to NG911. *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255, Notice of Inquiry, 25 FCC Rcd 17869, 17881, para. 30 (2010).

<sup>88</sup> Communications systems are administered through the BIA Office of the Chief Information Officer. *See* <http://www.bia.gov/WhoWeAre/AS-IA/OCIO/index.htm> (last visited Feb. 9, 2011).

<sup>89</sup> The Commission has granted approximately 475 licenses to Tribes for public safety activities (Universal Licensing System database accessed January 13, 2011).

<sup>90</sup> Tribal Law and Order Act of 2010, P.L. 111–211, § 211(b)(2), *codified at* 28 U.S.C.A § 2802(c)(10).

35. Fire and emergency medical response communications on Tribal lands involve a different set of agencies and systems that are separate from law enforcement. With respect to fire response, the National Interagency Fire Center (NIFC) coordinates federal wildfire-fighting efforts on Tribal as well as non-Tribal forest lands.<sup>91</sup> However, this coordinated federal fire-fighting program does not cover response to residential fires on Tribal lands. Yet another federal agency, the United States Department of Health and Human Services, through its Indian Health Service (IHS), handles medical response on Tribal lands, including ambulance services.<sup>92</sup>

36. One of the greatest challenges for public safety radio systems throughout the United States is interoperability. In the context of public safety radio systems, interoperability refers to the ability of public safety personnel from different agencies to use their radio systems to communicate and coordinate with one another in response to a common emergency. Interoperability may occur among responders within a common jurisdiction (for example, communication between police and fire radio systems), or it may occur when responders from different jurisdictions or geographic areas converge to respond to a major emergency or disaster.<sup>93</sup> Interoperability can be achieved through use of technically compatible radio equipment using the same air interface on common radio frequency bands. Systems that do not have technically compatible radios may also achieve a level of interoperability through the use of “bridges,” “gateways,” or similar network connections. In addition to the technical design component, achieving interoperability requires adequate funding, advance coordination and planning among public safety agencies, and frequent training of personnel in the use of interoperable systems.

## 2. Discussion

37. Because of the diverse and overlapping ways in which public safety and emergency communications are provisioned on Tribal lands, we seek to understand more about the current status of these services. We seek information on the degree to which Native Nations receive adequate public safety communications services, and whether the provision of these services falls under the jurisdiction of federal agencies, state or local authorities, or Native Nation authorities. We also seek to examine how public safety communications infrastructure and equipment are funded, acquired, and maintained, to ensure that our actions and assistance do not impede and help where possible, to improve the range and quality of services. What obstacles or challenges do individual Native Nations face to full deployment of public safety and emergency communications, whether jurisdictional, financial, geographic, cultural, or otherwise? We seek information about all areas of emergency response, including law enforcement, fire fighting, and medical response services. We also seek details regarding challenges encountered with respect to coverage, interference, availability of spectrum, and funding.

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<sup>91</sup> The NIFC is a joint operation with the Department of Interior, including the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies of the Department of Interior having firefighting responsibilities for public lands.

<sup>92</sup> IHS provides primary health care for Indians and Alaska natives throughout the United States. *See* 42 C.F.R. § 136.

<sup>93</sup> Part 90 of the Commission’s rules defines interoperability as “an essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.” 47 C.F.R. § 90.7. However, in the 700 MHz public safety broadband proceeding, we have recently proposed to redefine interoperability more broadly as the ability of public safety agencies to talk to one another via radio communications systems – to exchange voice and/or data with one another on demand, in real time, when needed and when authorized. *Public Safety Broadband Interoperability Order/FNPRM*, 26 FCC Rcd at 740, para 16. For purposes of this *NOI*, we encourage commenters to consider both the existing and the proposed definition of interoperability in their comments on Native Nations interoperability issues.

38. *Status of current and planned public safety and emergency communications on Tribal lands.* We seek comment on a series of questions regarding the status of public safety and emergency communications on Tribal lands. For example, what entities are currently involved in provisioning public safety and emergency communications to the residents of particular Tribal lands? To what extent are Native Nation governments authorized and able to self-provision in this regard? Are public safety communications services provided on a regional or more localized level? How do residents of specific Tribal lands communicate with police, fire, emergency medical, and other emergency response agencies? While there appear to be several agencies involved in providing overall emergency response, are there situations where requests for police, fire, emergency medical, ambulance, and other services are directed to and dispatched from one central location? What benefits and/or challenges arise from these circumstances and what, if anything, can the Commission do to improve emergency communications? To what extent are Native Nation public safety and emergency communications IP-based?

39. *Use of spectrum.* We seek comment on the use of spectrum in providing public safety and emergency services on Tribal lands. For example, what frequency bands (including both FCC-licensed bands and bands allocated for federal use) are used to provide Native Nation public safety and emergency services? To what degree do systems that provide service on Tribal lands operate on different bands? Are there particular bands that provide more effective communications based on terrain, building penetration, or other factors or that align more effectively with the propagation characteristics desired by specific users? Have the public safety agencies of Native Nations encountered interference challenges from other radio systems or within their own operations? Would broader access to public safety spectrum assist Native Nations in providing modern communications to support emergency response services? What needs for public safety broadband communications have been identified for Native Nations? To what extent, if any, are those needs currently being met?

40. Further, do particular Native Nation governmental agencies make more effective use of spectrum than others and, if so, how? Is there a lack of spectrum availability and, if so, what challenges are presented? Would Native Nation participation in the 700 MHz and 800 MHz regional public safety planning process,<sup>94</sup> as well as broader access to other public safety frequencies, provide meaningful assistance? If so, what processes and procedures would be necessary to assure fairness among competing spectrum users?

41. *Interoperability.* We seek comment on the extent to which public safety communications systems serving Tribal lands are interoperable, both with other systems operating within the same Native Nation area and with other Native or non-Native systems operating in neighboring areas. What level of interoperability exists among Native Nation governmental agencies providing emergency response? Do mutual aid relationships exist with neighboring state, local, or separate Native Nation jurisdictions? To the extent that such relationships exist, does the existing communications infrastructure support their effective implementation? Is interoperability affected by variation in the performance capabilities of neighboring systems? If interoperability is not effectively supported, how, if at all, do the various agencies communicate during an incident? Does the lack of interoperability hinder response to emergencies on Tribal lands or affecting Native Nations? Are there particular governance structures or coordination models that could improve interoperability? How should federal and state agencies with responsibility for interoperability coordinate with Native Nation governments, and how should such coordination efforts be structured to ensure that Native Nation sovereignty and self-determination are respected? Are there particular interoperability challenges in Tribal lands located in international border

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<sup>94</sup> See <http://www.fcc.gov/pshs/public-safety-spectrum/700-MHz/regional-planning.html>; <http://publicsafety.fcc.gov/pshs/public-safety-spectrum/800-MHz/regional-planning.htm> for information on Public Safety Regional Planning Committees.



areas?

42. *911 and E911 service.* We seek comment on the availability and quality of 911 service on Tribal lands. The Commission is aware of the fact that many public safety answering points (PSAPs) serving Tribal lands are not yet capable of receiving Enhanced 911 (E911) service. For example, in the State of New Mexico, all PSAPs are capable of receiving Phase II E911 service except the PSAPs serving the Navajo Nation and the Jicarilla Apache Nation. What are the challenges in receiving and dispatching response to 911 calls on Tribal lands? Are there any trends – such as consolidating public safety answering points (PSAPs) or implementing particular technologies – that have proven or should prove effective to improve emergency response? What is the impact on 911 location capability on the fact that residences on many Tribal lands lack traditional street addresses? What steps have been or should be taken to enable addressing of Native Nation residences for 911 location purposes? What is the extent of wireless E911 capability on Tribal lands? Do wireless calls to 911 provide Phase I caller identification information?<sup>95</sup> What is the extent of Phase II caller location?<sup>96</sup> To what degree do existing state 911 funding mechanisms, including collection of fees from wireline and wireless telephone subscribers, support, or fail to support provision of 911 on Tribal lands?

43. *Emergency alerting and communications restoration.* We seek information regarding emergency alerting and communications restoration on Tribal lands. Do Native Nations have the ability to transmit emergency alerts and information to residents of their lands? Do Native Nations or other providers use the Emergency Alerting System (EAS)?<sup>97</sup> Specifically, what is the level of Native Nation access to the EAS, and should it be expanded? Have Native Nations' needs been taken into account in the planning for new alerting platforms, such as Commercial Mobile Alerting Service (CMAS) or the Integrated Public Alert and Warning System (IPAWS) being developed by Federal Emergency Management Agency (FEMA)? To what extent do Native Nations coordinate with communications service providers, state, local, and federal government agencies in cases of disaster response? Do providers participate in the Commission's Disaster Information Reporting System (DIRS)?<sup>98</sup>

44. *Emergency preparedness and response.* We seek comment on the status of emergency preparedness and response on Tribal lands. For example, what is the level of emergency preparedness and planning with respect to Tribal lands? Do any disaster planning or emergency communications plans exist? Has any program been established for rapid provision of deployable equipment (e.g., deployable cell sites, mobile equipment caches) to Tribal lands in the event of a major disaster or emergency affecting Native Nations, particularly those in remote areas? Are there ways in which the Commission

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<sup>95</sup> Section 20.18(d)(1) of the Commission's rules requires licensees to provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call for any mobile handset accessing their systems to the designated Public Safety Answering Point (PSAP) through the use of Automatic Number Identification (ANI) or Pseudo-ANI. 47 C.F.R. § 20.18(d)(1)

<sup>96</sup> Section 20.18(e) of the Commission's rules requires licensees to provide to the designated PSAP the location of all 911 calls by longitude and latitude in conformance with accuracy requirements listed in Section 20.18(h). 47 C.F.R. § 20.18(e).

<sup>97</sup> Section 11.11 of the Commission's rules provides the President, or heads of state and local government, with the capability to provide immediate communications and information to the general public at the national, state, or local area levels during periods of national emergency. The rules apply to AM, FM, and TV broadcast stations, cable systems, and other participating entities. 47 C.F.R. § 11.11.

<sup>98</sup> See <http://www.fcc.gov/pshs/services/cip/dirs/dirs.html>. DIRS is a voluntary, web-based system that communications companies, including wireless, wireline, broadcast, and cable providers, can use to report communications infrastructure status and situational awareness information during times of crisis.



could assist in this area?

45. *Funding.* We recognize that the Native Nations public safety and emergency communications objectives discussed here rely on adequate funding. How are public safety communications in Native Nations currently funded? What are the potential funding sources for capital projects and operational maintenance for Native Nation public safety communications?<sup>99</sup> Are these funding sources adequately tailored to Native Nation needs, and if not, what gaps or deficiencies exist? Are there models available that present reliable estimates as to how much funding would be required to achieve quality, ubiquitous emergency communications for Native Nations?<sup>100</sup> Are Native Nations able to participate in federal programs that fund public safety communications and, specifically, interoperability (for example, through Public Safety Interoperable Communications (PSIC) or other federal grant programs)? If not, what have been the obstacles to such participation?

## **H. Cultural Preservation and Section 106 of the National Historic Preservation Act**

### **1. Background**

46. The Commission must consider the effects of construction of communications facilities by or for the use of the Commission's licensees under federal environmental statutes, including the National Environmental Policy Act (NEPA),<sup>101</sup> the Endangered Species Act (ESA),<sup>102</sup> and the National Historic Preservation Act (NHPA).<sup>103</sup> The Commission complies with these statutes by, among other things, requiring licensees and applicants to complete a review process under our environmental rules prior to constructing such facilities.<sup>104</sup> These construction projects include communications towers used for commercial mobile radio, broadcast, public safety, and other licensed services. While all of these environmental statutes include provisions for Native Nation consultation and involvement, Native Nations and Native Hawaiian Organizations (NHOs) are most deeply and frequently involved in our review process under Section 106 of the NHPA.<sup>105</sup> A significant concern of Native Nations is the potential effect of tower sitings on their traditional cultural properties or "sacred sites." The NHPA specifically protects historic properties of traditional religious and cultural importance to Native Nations and NHOs and requires federal agencies to consult with Native Nations and NHOs that attach religious

<sup>99</sup> For example, the Tribal Law and Order Act of 2010 expanded the ability of Tribes to obtain grant funding under the Community Oriented Policing Services (COPS) program, including funding "to develop new technologies, including interoperable communications technologies." P.L. 111-211, § 243, *codified at* 42 U.S.C.A. § 3796dd(b)(8). The Tribal Homeland Security Grant Program was authorized in the Implementing Recommendations of 9/11 Commission Act of 2007, which states that funds may be used for "ensuring operability and achieving interoperability of emergency communications." P.L. 110-53, *codified at* 6 U.S.C.A. §606. §609(a)(5).

<sup>100</sup> For example, we are aware of the significant work that BIA has undertaken to quantify the costs associated with provision of basic broadband services and NG911 to Tribal lands and seek to have those estimates entered in the record of this proceeding.

<sup>101</sup> 42 U.S.C. § 4321 *et seq.*

<sup>102</sup> 16 U.S.C. § 1531 *et seq.*

<sup>103</sup> 16 U.S.C. § 470 *et seq.*; see *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073, 1082-84, paras. 24-28 (2004) (*NPA Report and Order*), *aff'd sub nom. CTIA – The Wireless Association v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (explaining that treatment of tower construction as a "federal undertaking" under the NHPA reflects a permissible interpretation of the Commission's statutory authority over licensing and antenna structure registration).

<sup>104</sup> 47 C.F.R. §§ 1.1301-1.1319.

<sup>105</sup> 16 U.S.C. § 470f.

and cultural importance to such properties.<sup>106</sup>

47. Our process for involving Native Nations and NHOs in Section 106 review includes three major components. First, the Nationwide Programmatic Agreement (NPA) signed by the Commission, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers in 2004 outline specific procedures that our licensees and applicants must follow to notify Native Nations and NHOs of the proposed construction of communications facilities and invite their participation in review.<sup>107</sup> In particular, the NPA requires licensees and applicants to identify Native Nations and NHOs that may attach religious and cultural significance to historic properties that may be affected by a proposed undertaking within their ancestral, aboriginal, or ceded lands and to notify these Native Nations and NHOs early in the Section 106 process.<sup>108</sup> The NPA procedures do not constitute or substitute for government-to-government consultation with federally recognized Native Nations but, with the Native Nation's consent, are intended to streamline the process and eliminate the need for government-to-government consultation, where possible.<sup>109</sup>

48. Second, to assist our licensees and applicants in complying with the NPA, we created the Tower Construction Notification System (TCNS).<sup>110</sup> This secure electronic system allows Native Nations and NHOs to specify geographic preferences for notification, as well as other informational and procedural preferences; automatically notifies Native Nations and NHOs when a proposed construction is entered into the TCNS within their area of preference; and provides a means for Native Nations and NHOs to respond electronically to notifications.

49. Third, the Commission has entered into a Best Practices agreement with the United South and Eastern Tribes (USET) that provides additional guidelines for communications between our licensees and applicants and USET's member Native Nations.<sup>111</sup> Paragraph IV.J of the NPA states that the Commission will use its best efforts to develop similar agreements with other Native Nations and NHOs.<sup>112</sup>

## 2. Discussion

50. We seek comment on the effectiveness of our processes for involving Native Nations and NHOs in Section 106 review and on how those processes can be improved. For example, the NPA requires that licensees and applicants work with Native Nations and NHOs to identify historic properties of religious and cultural significance to them within the Area of Potential Effects (APE).<sup>113</sup> In order to

<sup>106</sup> See 16 U.S.C. § 470a(d)(6)(A), (B).

<sup>107</sup> 47 C.F.R. Part 1, App. C, Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, § IV.

<sup>108</sup> *Id.*, §§ IV.B, IV.C. The NPA does not apply on Tribal lands unless a Native Nation has signed the NPA. *Id.*, § I.D.

<sup>109</sup> *Id.*, § IV.G; see *NPA Report and Order*, 20 FCC Rcd at 1108-10, paras. 96-100.

<sup>110</sup> See [http://wireless.fcc.gov/outreach/index.htm?job=tower\\_notification](http://wireless.fcc.gov/outreach/index.htm?job=tower_notification).

<sup>111</sup> Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review pursuant to Section 106 of the National Historic Preservation Act (adopted Oct. 25, 2004). USET is a non-profit inter-Tribal government organization comprised of 25 federally recognized Native Nations from Maine to Florida to Texas.

<sup>112</sup> NPA, § IV.J.

<sup>113</sup> *Id.*, § VI.D.1.b. This requirement is an exception to the general rule that applicants need identify only historic properties that have been listed on the National Register of Historic Places or determined to be eligible for listing in (continued...)

facilitate this identification, our applicants use the TCNS to provide certain basic information about their proposed constructions. The TCNS permits Native Nations and NHOs to request additional information either for all proposed projects or on a case-by-case basis. Has this process been successful in getting Native Nations and NHOs the information they need in a manner that is efficient both for Native Nations and NHOs and for our licensees and applicants? Does the process of identifying, evaluating, and assessing effects on historic properties with cultural and religious significance to Native Nations and NHOs, including historic properties that are cultural landscapes, generally proceed in a collaborative manner? Are there actions we could take to facilitate further collaboration? Are there changes that would make the TCNS system more useful either to Native Nations and NHOs or to applicants?

51. We note also that some reviews involve constructed communications facilities that were not submitted for Section 106 review at the time of construction, and we seek comment on the processes for involving Native Nations and NHOs in these reviews. In addition, we invite comment on the effectiveness of the NPA's provisions for handling confidential and sensitive information, and on the success of parties' efforts to resolve any issues regarding such information.<sup>114</sup>

52. We also seek comment on the experiences of the USET Tribes, licensees, and applicants under the USET Best Practices. Have these Best Practices been successful? What provisions have been most valuable, and where have they fallen short? Building on this experience, we seek comment on how we might best pursue similar agreements with groups of Native Nations or NHOs in other regions of the country. Over the years, our staff has regularly interacted with Native Nation historic preservation and cultural resource personnel both at meetings of the National Association of Tribal Historic Preservation Officers and at regional gatherings, and we have been approached by Native Nations in different regions about entering into Memoranda of Understanding or consultation protocol agreements. We seek comment both on how to initiate and structure consultations regarding such agreements and on what provisions might be most valuable. For example, would it be helpful to establish guidelines regarding what information might appropriately be expected for particular types of projects? Are there classes of construction that are unlikely to affect historic properties of traditional religious and cultural significance to Native Nations or NHOs, and for which expedited review might benefit Native Nations and NHOs as well as licensees and applicants?<sup>115</sup> Are there other voluntary measures that might improve the efficiency of Native Nation or NHO review? Could Native Nations agree on cooperative practices that might reduce duplication in their reviews? We further invite comment on whether our consultation with USET should be reopened to address these questions.

53. In addition to improvements to the process, we also seek comment on how we can educate parties better to use our existing process. The Commission staff regularly provides training on the Section 106 process to participants representing all interests, including presentations at meetings of State and Tribal Historic Preservation Officers. Most of these training opportunities have taken the form of general overviews of our rules and our electronic systems. We invite comment on appropriate venues and formats to provide additional education to Native Nations and NHOs and on what topics would most benefit them. We also welcome suggestions as to any training that we should provide to our applicants

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certain public sources. *Id.*, § VI.D.1.a. The requirement recognizes that for both religious and preservation reasons, Native Nations and NHOs often prefer that their historic properties not be publicly identified.

<sup>114</sup> See NPA, § IV.I.

<sup>115</sup> For example, some Native Nations and NHOs may be unlikely to have an interest in those collocations that are required to complete Section 106 review under the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 C.F.R. Part 1, App. B.

and their consultants regarding their interactions with Native Nations and NHOs through our Section 106 process.

54. In this regard, we also seek comment on whether Native Nations and NHOs may be able better to leverage our existing processes outside of the TCNS to improve the quality and efficiency of their participation in Section 106 review. For example, Tribal adoption of the NPA might benefit Native Nations by applying the NPA's processes and presumptions to communications projects on Tribal land.<sup>116</sup> We seek comment on the benefits and disadvantages of Native Nation adoption of the NPA and on what measures may be appropriate to encourage Native Nations to consider this option. In addition, the Commission has developed an electronic E106 System that, on a voluntary basis, enables online delivery of Section 106 forms and communications among parties to the Section 106 review.<sup>117</sup> Although Native Nations and NHOs may access the E106 System to review documentation for proposed undertakings where they are participating in the review, few Native Nations and NHOs have availed themselves of this option. We invite comments as to whether this opportunity is valuable to Native Nations and NHOs and suggestions as to how we might improve their ability to use the E106 System.

55. Finally, we seek comment on the considerations that should govern our handling of requests from other Federal agencies for access to the TCNS. These requests have involved both communications projects and projects that are unrelated to communications, and have ranged from requests for information contained in the TCNS database to requests to use the TCNS as part of the agency's own Section 106 process. In September 2009, following an outreach program to Native Nations and NHOs, we granted the Department of Agriculture's Rural Utilities Service (RUS) and the Department of Commerce's NTIA limited access to the TCNS so that their headquarters staff could enter information on broadband and telecommunications grant awards under the Recovery Act, but we did not grant them access to the geographic-preferences database. While we see benefits to making the improved accuracy and efficiency of the TCNS available to other Federal agencies with Section 106 responsibilities, we are also committed to protecting the security of Native Nations' and NHOs' proprietary information and to ensuring that Native Nations and NHOs are comfortable with any expanded use of the TCNS. We therefore request comment on what factors we should consider and what processes we should follow in deciding whether to grant requests for access to the TCNS to other federal agencies.<sup>118</sup> Should these factors and processes vary depending on the nature of the request – for example, whether the agency requests access to the Native Nations' and NHOs' geographic preference information and whether non-Federal entities will have access to the system? What outreach should the requesting agency undertake before obtaining access?

## **I. Satellite-Based Services**

### **1. Background**

56. Satellite technology provides telecommunications service throughout the country, and can be particularly important for serving remote, unserved, and underserved communities nationwide, including those on Tribal lands. Because satellites orbit far above the Earth, their footprint or service area

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<sup>116</sup> See NPA, § I.D (providing for individual Native Nations to adopt the provisions of the NPA). For example, the NPA establishes presumptive Areas of Potential Effects for visual effects depending on the height of the tower, and it establishes procedures for submitting a standard Submission Packet to the State or Tribal Historic Preservation Officer. *Id.*, §§ VI.B.4, VII.A.

<sup>117</sup> See [http://wireless.fcc.gov/outreach/index.htm?job=tower\\_notification](http://wireless.fcc.gov/outreach/index.htm?job=tower_notification).

<sup>118</sup> We note that any grant of such requests will also be subject to technical, budgetary, and resource constraints, as well as the ability of the requesting agency to bear any associated costs.

covers nearly every part of the United States, providing instant, ubiquitous, and reliable coverage.<sup>119</sup> To aid comment in this proceeding, we provide an overview of (a) commercial satellite data, voice, video, and audio services; (b) current satellite service business models; and (c) the Commission's regulatory role in satellite service.

57. Commercial Fixed-Satellite Services (FSS) services became widely available in the 1970s in the "C-band" frequencies (4/6 GHz).<sup>120</sup> This first generation of satellite services was focused primarily on large, fixed applications, such as delivery of video content to cable distribution points ("cable head ends") and direct-to-home one-way video services using large 3-meter diameter dish antennas to communicate with satellites in geostationary satellite orbit (GSO).<sup>121</sup> In the late 1970s, commercial satellites began to utilize the higher "Ku-band" frequencies (12/14 GHz).<sup>122</sup> Because frequency is inversely related to wavelength,<sup>123</sup> the use of higher frequencies makes smaller "dish" subscriber antennas possible, while still providing data rates comparable to those of bigger antennas at lower frequencies.<sup>124</sup> Smaller antennas led to a variety of new consumer services including one-way satellite television and two-way very small aperture terminal (VSAT) networks with antenna sizes of about 0.7 to 1.5 meters. Smaller dish size has also fostered innovative two-way services involving transportable fixed dishes<sup>125</sup> as well as mobile applications on vehicles, aircraft, and vessels.<sup>126</sup> In the last

<sup>119</sup> Satellite infrastructure also imposes some limitations. Satellites require long construction lead times and involve considerable costs.

<sup>120</sup> *Establishment of Domestic Communication-Satellite Facilities by Nongovernmental Entities*, Docket No. 16495, Report and Order, 22 FCC 2d 86 (1970). Commercial satellite services are generally provided at frequencies above one gigahertz (GHz).

<sup>121</sup> The geostationary satellite orbit is a circular orbit along the plane of the Earth's equator at an altitude of 35,786 kilometers, at which a spacecraft can be maintained at a constant longitudinal position relative to the Earth. Thus, the satellite appears fixed in the sky above the Earth. This allows GSO satellites to be linked permanently to locations on Earth, and has led to GSO satellites being used for the majority of satellite video, audio, voice, and data services. All other orbits are classified as non-geostationary satellite orbits (NGSO). Because NGSO satellites do not remain at a constant position relative to the Earth, NGSO systems generally require a constellation of multiple satellites in order to provide nationwide or global coverage.

<sup>122</sup> *See Satellite Business Systems*, Memorandum Opinion, Order, Authorization and Certification, 62 FCC 2d 997, 1084, para. 252 (1977).

<sup>123</sup> The wavelength,  $\lambda$ , of a radio signal is the speed of light (300,000 km/s),  $C$ , divided by frequency,  $f$  (or,  $\lambda = C/f$ ).

<sup>124</sup> Satellite services often use directional, high-gain parabolic dish antennas to provide the necessary signal strength between the satellite and the end user. Parabolic dish antennas must be several wavelengths in diameter in order to focus radiofrequency energy effectively. Thus, the shorter the wavelength, the smaller the dish diameter may be without loss of efficacy.

<sup>125</sup> Some of these FSS earth stations are no larger than a suitcase and are used to provide high-speed services including Internet services. *See, e.g.,* AVL Technologies, Application to Modify Blanket Earth Station License to Add 50 Each of 0.75, 0.96 and 1.0 meter Ku-Band Antennas, Order and Authorization, 19 FCC Rcd. 22,086 (2004) (0.75, 0.96 and 1.0 meter transportable temporary-fixed earth station antennas); SWE-DISH Satellite Communications, Inc., Application for Authority to Operate a Single Temporary-Fixed Earth Station in the Ku-Band Fixed-Satellite Service, Order and Authorization, 19 FCC Rcd. 16,314 (2004) (0.90 x 0.66 meter transportable temporary-fixed).

<sup>126</sup> The Commission has adopted technical rules to facilitate the use of earth stations fixed to mobile platforms communicating with GSO FSS satellites. *See, e.g., Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands*, IB Docket No. 02-10, Report and Order, 20 FCC Rcd 674 (2005); *Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in* (continued...)



decade, commercial satellite operations at higher frequencies in the “Ka-band” (18/29 GHz)<sup>127</sup> have allowed dish size to be reduced to smaller than one meter.<sup>128</sup>

58. In the late 1980s, the Commission authorized the first commercial Mobile-Satellite Service (MSS) satellite systems.<sup>129</sup> MSS satellites operate with earth stations that are authorized to transmit and receive while moving. In the 1990s, the Commission adopted rules for additional MSS systems.<sup>130</sup> MSS is provided at frequencies lower than those used for FSS.<sup>131</sup> Some MSS networks use handsets with short, stubby omni-directional (*i.e.*, non-parabolic dish) subscriber antennas that look similar to Land Mobile Radio Service (LMRS) handsets. Many new MSS networks have handsets that will be similar in size to modern smart phones.

59. Delivery of satellite services in the United States follows a number of basic models. One model involves the direct delivery of satellite service to individual residential or commercial consumers throughout the country. A second model aggregates individual end-user locations, often making the last mile connection to end users with Wi-Fi or WiMAX, and then backhauls that traffic from a central location via FSS networks.<sup>132</sup> Significantly, while the satellite operator often markets satellite service

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*Certain Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 07-101, Report and Order, 24 FCC Rcd 10414 (2009). The Commission has also granted waivers or authorizations allowing mobile earth stations aboard aircraft to communicate with GSO FSS satellites. *See, e.g., ViaSat, Inc. Application for Blanket Authority for Operation of 1,000 Technically Identical Ku-Band Aircraft Earth Stations in the United States and Over Territorial Waters*, Order and Authorization, 22 FCC Rcd 19964 (Int’l Bur. and OET 2007).

<sup>127</sup> *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket No. 98-172, Report and Order, 15 FCC Rcd 13430 (2000). The Commission has also allocated spectrum above 30 GHz for use for commercial satellite services, in the “V-band.” *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands*, IB Docket No. 97-95, Second Report and Order, 18 FCC Rcd 25428 (2003). To date, there are no commercial satellite operations in this band.

<sup>128</sup> *See e.g.*, [http://www.wildblue.com/aboutWildblue/how\\_it\\_works\\_demo.jsp](http://www.wildblue.com/aboutWildblue/how_it_works_demo.jsp); and <http://www.starband.com/how-satellite-Internet-works/> (24” tall x 36” wide dish).

<sup>129</sup> *Amendment of Parts 2, 22, and 25 of the Commission’s Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services*, Gen. Docket No. 84-234, Second Report and Order, 2 FCC Rcd 485 (1987).

<sup>130</sup> *See Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to Non-Voice, Non-Geostationary Mobile-Satellite Service*, CC Docket No. 92-76, Report and Order, 8 FCC Rcd 8450 (1993); *Amendment of the Commission’s Rules to Establish Rules and Policies Pertain to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, CC Docket No. 92-166, Report and Order, 9 FCC Rcd 5936 (1994); *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2GHz for use by the Mobile Satellite Service*, ET Docket No. 95-18, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 7388 (1997); *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, Report and Order, 15 FCC Rcd 16127 (2000).

<sup>131</sup> Little Low Earth Orbit (Little LEO) MSS operates in the VHF band at 137-138 MHz/148-150.05 MHz/399.9-400.05 MHz/400.15-401 MHz; L-band MSS operates in the 1525-1559/1626.5-1660.5 MHz frequency bands; Big Low Earth Orbit (Big LEO) MSS operates in the 1.6/2.4 GHz frequency bands; and 2 GHz MSS operates in the 2000-2020/2180-2200 MHz frequency bands.

<sup>132</sup> In this regard, globally many FSS operators provide Internet “middle mile” backhaul connectivity of varying bandwidths based on the ISP customer’s requirements. In this type of situation, the ISPs provides the “last mile”  
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directly to individual customers, it is just as often available from systems integrators, managed service providers, and value-added resellers. Systems integrators and managed service providers develop end-to-end connectivity solutions using FSS and MSS capacity. They provide for the design, construction, and operation of earth stations and – where necessary – other terrestrial network facilities, including private network operations centers, engineering, and software. Integrators may also bundle discrete satellite services (for example, broadband services with satellite TV).

60. The Act requires a license for any communications transmitted via satellite. Satellite transmission involves both a space station and an earth station to complete the transmission link. Thus, the Commission licenses both space stations and earth stations. A space station authorization generally allows service anywhere within the space station's "footprint." This encompasses large areas of the United States, or, where technically feasible, the entire United States.<sup>133</sup> The Commission permits space stations authorized by other countries to provide service in the United States.<sup>134</sup> Non-U.S. licensed satellite systems providing service to the United States are subject to the same legal and technical rules and procedures applicable to U.S.-licensed systems.

## 2. Discussion

61. We seek comment on how satellite services, either as a stand-alone platform or as part of a combined satellite and terrestrial network, can be used to provide effective, efficient, and affordable telecommunications services on Tribal lands. In particular, we seek comment on the technical details of any unique satellite solutions that have been tailored to provide service to Tribal lands.<sup>135</sup> We also seek comment on any policies we could adopt, or regulations we should eliminate or streamline, that would facilitate utilization of satellite service by Native Nations.

62. *Satellite-based Internet service.* The Commission's licensing policies provide a broad degree of flexibility to satellite operators to provide a mix of services. Thus, multiple satellite systems provide two-way high-speed Internet access to homes and businesses within the United States.<sup>136</sup>

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(whether wired or wireless) and the satellite operator provides the connection to the rest of the Internet through a hub earth station.

<sup>133</sup> If the footprint or coverage area extends beyond the United States, operators are required to comply with the applicable laws, regulations, rules and authorization process of any country in which it seeks to provide service.

<sup>134</sup> *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094, 24174, para. 186 (1997) (*DISCO II Order*).

<sup>135</sup> In this regard, we note that recently one satellite operator has entered into agreements with Native Nations to provide high-speed Internet connectivity. <http://www.lightsquared.com/press-room/press-releases/introducing-lightsquared-revolutionizing-the-u-s-wireless-industry-2>; <http://www.lightsquared.com/press-room/press-releases/lightsquared-and-the-indian-health-service-partner-for-remote-communications-for-the-indian-health-system>. See also *LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, DA 11-133 (rel. Jan. 26, 2011).

<sup>136</sup> We note that several operators received awards under the broadband program pursuant to the Recovery Act. <http://www.broadbandusa.gov/files/BIP%20Round%202%20and%202%20Awardees.pdf> (last visited Jan. 29, 2011). GSO-FSS Ka-band space stations are the most frequently cited examples of such service. For example, WildBlue Communications provides Internet service using GSO-FSS Ka-band satellites. <http://www.wildblue.com/company/index.jsp>. For a description of the WildBlue network go to [http://www.wildblue.com/aboutWildblue/how\\_it\\_works\\_demo.jsp](http://www.wildblue.com/aboutWildblue/how_it_works_demo.jsp). HughesNet provides Internet access utilizing a Ka-band GSO FSS satellites (Spaceway 3). Ka-band GSO-FSS satellites are used worldwide to provide two-way Internet service. ViaSat has also launched into orbit a new Ka-band space station designed to provide throughput of

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Download speeds for these networks providing Internet access are currently in the range of 1-2 Mbps, and upload speeds range from 128 kbps to 300 kbps, with higher speeds proposed for next generation systems.<sup>137</sup> In light of the rapid development of the Internet subscriber market, multiple satellite operators plan to launch next generation Ka-band GSO FSS space stations in the near term for service in the United States and globally.<sup>138</sup> Further, while best known in the context of business applications, Ku-band GSO FSS space stations are also utilized to provide individual consumers with Internet connectivity.<sup>139</sup> In addition, some MSS space stations provide high-speed Internet access for mobile and portable applications.<sup>140</sup> Some systems are designed to be integrated with terrestrial mobile networks, and provide seamless communications capability where terrestrial infrastructure is not available.<sup>141</sup> We seek comment on how these existing services are currently used to provide Internet service on Tribal lands and comment on any barriers to such use. We also seek comment on how planned services could be used on Tribal lands.

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70 gigabits per second, and will facilitate consumer broadband service speeds of up to 10 megabits per second. *Eutelsat Envisions Array of Services Using Ka-Sat*, SPACE NEWS (Dec. 27, 2010), available at <http://www.spacenews.com/launch/101227-ka-sat-launched-proton.html>; Press Release (Dec. 27, 2010), available at <http://www.eutelsat.com/news/press-releases-2010.html>.

<sup>137</sup> See e.g., <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020923189> (mentions download speeds of up to 5 Mbps); <http://connectedplanetonline.com/independent/news/Stimulus-funding-for-satellites-brings-broadband-to-remote-rural-areas-0113/#>

<sup>138</sup> Both Hughes and ViaSat have applied to the Commission for authority to provide U.S. service using planned Ka-band space stations. See, e.g., IBFS File Nos. SAT-LOI-20091110-00120, SAT-LOI-20091110-00121, and SAT-LOA-20100217-00029. Other Ka-band networks in the planning stages include Inmarsat's next generation Ka-band network, which is intended to provide high-speed mobile broadband service with a business consumer's focus. See Press Release, "Inmarsat Announces \$1.2bn Investment in Next Generation Ka-band Satellite Network," (rel. Aug. 6, 2010), available at <http://www.inmarsat.com/About/Newsroom/Press/>. In addition, O3b plans to launch a new NGSO medium earth orbit (MEO) Ka-band satellite network designed to provide global Internet backbone in emerging markets. [http://www.o3bnetworks.com/Media\\_Centre/press\\_release\\_details.aspx?id=67](http://www.o3bnetworks.com/Media_Centre/press_release_details.aspx?id=67).

<sup>139</sup> For example, iDirect offers consumer service at advertised speeds of 2000 kbps down and 512 kbps up. See <http://www.virgintechologies.com/downloads/VLINKNetwork.pdf> and <http://www.virgintechologies.com/downloads/iDirect-Web.pdf>. The earth stations fixed to mobile platforms communicating with GSO FSS space stations described above provide Internet connectivity at a variety of speeds using Ku-band space stations. Ku-band is also used to provide Internet service to consumer in Europe. See, e.g., <http://www.astra2connect.com/why-astra2connect/index.php> (designed for maximum download speed of up to 4,096 kbit/s and maximum upload speed of up to 256 kbit/s). Globally operators may utilize both Ku- and Ka-band GSO FSS space stations to provide Internet service. See, e.g., [http://www.spacenews.com/satellite\\_telecom/viasat-picks-viasat-technology-for-consumer-broadband-offering.html](http://www.spacenews.com/satellite_telecom/viasat-picks-viasat-technology-for-consumer-broadband-offering.html).

<sup>140</sup> For example, Inmarsat provides high-speed Internet service through its broadband global area network (BGAN) terminals of up to 492 kbps. [http://www.inmarsat.com/Downloads/English/BGAN/Collateral/bgan\\_overview\\_brochure\\_EN.pdf?language=EN&extonly=False](http://www.inmarsat.com/Downloads/English/BGAN/Collateral/bgan_overview_brochure_EN.pdf?language=EN&extonly=False). Inmarsat operates a fleet of MSS-GSO L-band space stations pursuant to authorizations from the United Kingdom. See Inmarsat website, "Our Satellites: I-4s Lead the Fleet," available at [http://www.inmarsat.com/About/Our\\_satellites/The\\_Inmarsat-4s.aspx](http://www.inmarsat.com/About/Our_satellites/The_Inmarsat-4s.aspx); INMARSAT, Inc., Request to Streamline Licensing of L-band Mobile-Satellite Service Terminals Using Inmarsat Satellites as Points of Communication, IBFS File No. SES-PDR-20080303-00367, Order, 23 FCC Rcd. 15268 (Int'l Bur. 2008).

<sup>141</sup> <http://www.lightsquared.com/press-room/press-releases/introducing-lightsquared-revolutionizing-the-u-s-wireless-industry-2/>. <http://www.terrestar.com/commercial.php>.

63. *Mobile voice and data-messaging services.* The Commission has authorized several other MSS networks that can be used to deliver telecommunications services to Tribal lands. For example, the FCC has authorized Orbcomm to provide non-voice, data messaging services through its Little LEO satellite system.<sup>142</sup> The Commission has authorized two companies, Globalstar and Iridium, to provide a variety of mobile voice and data communication services within the United States through their Big LEO satellite systems.<sup>143</sup> Both Big LEO and Little LEO systems are capable of providing service to Tribal lands and other unserved areas that have not been linked to the telecommunications infrastructure. We seek comment on how these existing voice and data services are currently used to provide service on Tribal lands, as well as any barriers to such utilization.

64. *Video and audio services.* Because of their large coverage areas, satellites are well-suited to the mass distribution of video and audio services. As noted above, one-way direct to subscriber satellite television and radio have become commonplace consumer devices in many American homes and automobiles.<sup>144</sup> Satellite television has grown rapidly since its initiation in the mid-1990s. Since 2001, Satellite Digital Audio Radio Service (SDARS) operators have offered one-way satellite radio service directly to subscribers in the United States.<sup>145</sup> We seek comment on how satellite video and audio services are used on Tribal lands and any barriers to utilization of such services. We view these services as significant resources in Tribal lands because satellite systems are often used to disseminate information to the public and to first responders in emergencies, including natural disasters.<sup>146</sup>

65. *Business models.* We seek comment on alternative business models through which Native Nations can access satellite-based infrastructure to meet the needs of consumers on Tribal lands for Internet connectivity. For example, is it technically and economically feasible for Native Nations to buy or lease transponder capacity directly from satellite operators and then contract with equipment manufacturers or systems integrators to produce customized end-user equipment? What is the range of speeds that can be provided to individual customers and are there increased equipment costs associated with higher speeds? How can a network be designed so that it is technically and economically feasible to access the Internet at speeds greater than those provided by “off the shelf” equipment? To the extent that it may not be technically or economically feasible to provide Internet access at these higher speeds to all end users of a satellite service provider, is it technically and economically feasible to provide Internet access at higher speeds to a smaller subset of users aggregated by a Native Nation if the Native Nation

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<sup>142</sup> See *Orbital Communications Corp.*, Order and Authorization, 13 FCC Rcd 10828 (Int’l Bur. 1998).

<sup>143</sup> See *Motorola Satellite Communications, Inc.*, Order and Authorization, 10 FCC Rcd 2268 (Int’l Bur. 1995) (Iridium); *Loral/Qualcomm Partnership, L.P.*, Order and Authorization, 10 FCC Rcd 2333 (Int’l Bur. 1995) (Globalstar). Globalstar plans to provide in its next generation network increased data speeds of up to 256 kbps. <http://www.globalstar.com/en/index.php?cid=7010&pressId=633>. Iridium plans that its next generation network will deliver higher data speeds (L-band data speeds of up to 1.5 Mbps and high-speed Ka-Band service of up to 8 Mbps). <http://www.iridium.com/about/IridiumNEXT.aspx>

<sup>144</sup> The number of U.S. satellite pay TV subscribers exceeded 30 million in 2009, with global subscribers estimated at 140 million. Satellite Industry Association “State of the Satellite Industry Report,” June 2010 at 10 (filed in IB Docket No. 10-99 on August 23, 2010). Satellite television is provided in a number of frequency bands including the Ku- and Ka-bands with expansion anticipated into the 17/24 GHz bands.

<sup>145</sup> SDARS operates in “S-band” frequencies at 2320-2345 MHz. The number of subscribers is estimated at 20 million. <http://investor.sirius.com/releases.cfm>.

<sup>146</sup> In addition to dissemination of critical information through news programs, satellite television and satellite radio are now integrated into the national Emergency Alert System. *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-191, 20 FCC Rcd 18625 (2005).

also controls one or more transponders on a space station? We ask commenters to consider the community-oriented nature of demand aggregation on Tribal lands, the significance of consultation with Native Nation leaders, and the critical role of Native Nation anchor institutions.

66. *Regulatory overview.* The Commission has developed technical and operational rules for satellite services to facilitate efficient use of the radio spectrum while minimizing the potential for harmful interference among the various users.<sup>147</sup> We seek comment on whether, and to what extent, these rules facilitate or impede the provision of satellite services in Tribal lands. Are there aspects of these rules that could be modified or made more flexible to encourage expanded service to Tribal lands while ensuring that the risk of harmful interference to other services or operators is not increased? Commenters should explain how proposed rule changes would satisfy the goal of expanded telecommunications service to Tribal lands while not increasing the likelihood of harmful interference to existing services.

## **J. Disability Matters in Native Nations**

### **1. Background**

67. In the past few decades, there have been several important efforts to address the need for people with disabilities to have access to evolving communications technologies. Most recently, on October 8, 2010, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) was signed into law.<sup>148</sup> The CVAA contains a series of directives to make sure that our nation's 54 million Americans with disabilities are able to fully utilize advanced communications services and equipment used with those services. In adopting this law, Congress found that people with disabilities often have not been able to benefit from the many broadband and digital innovations enjoyed by other Americans.<sup>149</sup> Data from an October-November 2009 survey confirm that people with disabilities have far lower broadband availability rates than the general public.<sup>150</sup>

68. The National Broadband Plan acknowledged many of these barriers and emphasized the importance of ensuring that Americans with disabilities have the same opportunity to benefit from broadband, hardware, software, services, and digital content as everyone else.<sup>151</sup> We take this opportunity to now explore the impact that such barriers have had on Americans with disabilities who are living on Tribal lands, and we invite comment from Native Nations and their communities to begin a dialogue on how to reduce and eventually eliminate such barriers.

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<sup>147</sup> See 47 C.F.R. Part 25.

<sup>148</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010.

<sup>149</sup> See H.R. Rep. No. 111-563, at 19, (2010); S. Rep. No. 111-386, at 1-2 (2010).

<sup>150</sup> The survey showed that only 42 percent of Americans with disabilities had broadband at home, far below the national average of 65 percent. Lyle, E., *A Giant Leap & a Big Deal: Delivering on the Promise of Equal Access to Broadband for People with Disabilities* (Federal Communications Commission) (April 2010) at 6 (*A Giant Leap*) (citing to John B. Horrigan, *Broadband Adoption and Use in America 3* (Federal Communications Commission) (2010)). In addition, as many as 39 percent of non-adopters have a disability, a much greater number than the 24 percent of overall survey respondents without disabilities. *Id.* A more recent survey conducted with over 3000 adults in 2010 by Pew Internet and American Life generally confirmed these findings, and further found that only 54% of adults living with a disability use the Internet, compared with 81 percent of adults without disabilities. <http://www.pewinternet.org/Reports/2011/Disability.aspx> (last visited Jan 21, 2011).

<sup>151</sup> *National Broadband Plan* at Section 9.5.

69. The incidence of disabilities within Tribal land populations has been shown to be comparable to the incidence of this population within the general public. A recent survey conducted by Pew Internet and American Life revealed that as many as one in four American adults are living with a disability that interferes with the activities of daily living. By comparison, a 2003 study conducted by the National Council on Disability (NCD) estimated that nearly 22 percent of American Indians, Eskimos, and Aleuts have a disability.<sup>152</sup> The NCD study further revealed that the substantial majority of such individuals live on Tribal lands located in rural or frontier areas.<sup>153</sup>

70. People with disabilities generally experience higher unemployment rates, lower incomes, and greater educational disadvantages than do individuals living in the general population.<sup>154</sup> Each of these factors contribute to lower broadband adoption and use.<sup>155</sup> For people with disabilities, however, physical barriers caused by inaccessible design in communications products and services exacerbate the problem. When people with disabilities encounter physical barriers to communications technologies, they are prevented from enjoying the same level of digital access as their friends, colleagues, and peers who are not disabled.<sup>156</sup> For example, when web content on a local government website is not compatible with screen readers, blind people cannot access the critical information they need to exercise their civic duties. When menus on mobile phones are miniaturized or complex, people with cognitive or manual dexterity limitations may not be able to use these devices to find jobs or connect with their loved ones.<sup>157</sup> In addition, when 911 public safety answering points only respond to calls by voice, people with hearing loss who use digital text or video to send messages cannot get help in an emergency.

71. New broadband and digital communications technologies offer considerable promise for people with disabilities. When high speed Internet is accessible to people who cannot see, hear, or easily move around, it can serve as a means of leveling the playing field.<sup>158</sup> For example, a person who is deaf or hard of hearing may be able to obtain training through remote video conferencing that uses sign language interpretation delivered via broadband, while a person who is blind or visually impaired may be able to use audio output to identify relevant buttons, navigate menus, and make desired selections on a cell phone or a television set. Likewise, a person with a motor disability may be able to use assistive technology such as puff sticks or eye movement controls to surf the Internet to shop for their favorite products. Where technology is accessible, it is liberating, providing individuals with the tools they need to be productive and self-sufficient. On the other hand, where accessibility barriers exist, people with disabilities lose the ability to be independent, and are potentially denied access to jobs, education, Internet commerce, and their right to participate in civic affairs.

## 2. Discussion

72. We seek comment on the extent to which people with disabilities living on Tribal lands

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<sup>152</sup> National Council on Disabilities, *People with Disabilities on Tribal Lands: Education, Health Care, Vocational Rehabilitation, and Independent Living*, at 14, August 1, 2003, [www.ncd.gov/newsroom/publications/2003/tribal\\_land.htm](http://www.ncd.gov/newsroom/publications/2003/tribal_land.htm) (NCD Report).

<sup>153</sup> *Id.* at 15.

<sup>154</sup> See, e.g., Coalition of Organizations for Accessible Technology Comments, GN Docket No. 09-40, Apr. 10, 2009) (COAT Comments).

<sup>155</sup> See *National Broadband Plan* at Section 9.5.

<sup>156</sup> *Id.*

<sup>157</sup> See generally *A Giant Leap* at 6.

<sup>158</sup> COAT comments at 7.



are experiencing barriers to telecommunications and advanced communications technologies. In particular, we ask whether people with disabilities living in such communities (especially rural communities) are encountering greater barriers to the necessary support services than are people with disabilities living outside these communities. For example, do people living in such areas face greater difficulties in obtaining assistive technology or adaptive equipment because there are fewer commercial establishments with market demand to supply this technology, less awareness of assistive technologies, or a general lack of resources to obtain such technologies?<sup>159</sup> Do the remote locations of many Tribal lands make it more difficult to provide people with disabilities with the training and educational opportunities they need to learn about and become skilled in using modern communications technologies? Are there certain levels of broadband capacity (for example, speed and bandwidth) that may be needed by this particular segment of the Native Nation population? For example, could high speed broadband fill gaps for people reliant on sign language who cannot access nearby interpreters for their daily needs, or for people in wheelchairs for whom the geographical topography of these lands make it more difficult to move around? To what extent can funding subsidies for adaptive equipment help to close some of the technology gaps that currently exist for this population? We invite comment in general on the issues that people with disabilities on Tribal lands face in this digital age, as well as ways that the Commission can begin addressing these barriers.

**K. Consultation and Coordination with Native Nations**

**1. Background**

73. Government-to-government consultation is a foundational concept in the unique legal relationship between the federal government and Native Nations. Native Nation leaders often have stressed the importance of consultation to the eventual success of Commission decision-making, and that consultation should be regarded as an ongoing dialogue between Native Nations and the Commission. In the *Tribal Policy Statement*, the Commission reaffirmed its commitment to the following goals and principles, among others:

1. The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.
2. The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.
3. The Commission will strive to develop working relationships with Tribal governments, and will endeavor to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Tribal lands.<sup>160</sup>

74. The National Broadband Plan also noted that “developing and executing a plan to ensure

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<sup>159</sup> *Id.* at 20.

<sup>160</sup> *Tribal Policy Statement*, 16 FCC Rcd at 4081-82.



that Tribal lands have broadband access and that Tribal communities utilize broadband services requires regular and meaningful consultation with Tribes on a government-to-government basis.”<sup>161</sup> On August 12, 2010, the Commission created the Office of Native Affairs and Policy (ONAP) to implement a National Broadband Plan recommendation that it establish such an office “to consult regularly with Tribal leaders ...” and “develop and drive a Tribal agenda in coordination with other FCC Bureaus and Offices.”<sup>162</sup> ONAP is charged with ensuring robust government-to-government consultation with federally-recognized Native Nation governments and coordination with other Native organizations; working with Commissioners, Bureaus, and Offices within the Commission, as well as with other government agencies and private organizations; to develop and implement policies for assisting Native communities; and to ensure that Native concerns and voices are considered in all Commission proceedings and initiatives.

## 2. Discussion

75. Recognizing that, at any given time, Native Nations have many issues upon which they are consulting with the federal government, we seek comment on the most productive and efficient manner in which we can structure a consultation process unique to the Commission. The Commission has many issues that are subject to consultation and coordination in accordance with the *Tribal Policy Statement*. As certain areas of the Commission’s rules and policies are of interest to all Native Nations, and individual Native Nations also have their own unique communications priorities, we seek comment on how to meet our obligations with respect to issues of both national and individual importance. We also seek comment on how the Commission should structure the consultation and coordination process. For example, are there factors that apply uniformly to all consultations with Native Nations, or do specific issues require particular types of structural approaches to consultation? How can the Commission most effectively consult with Native Nations to achieve a meaningful exchange of information and perspectives?

76. We note that certain types of consultation with Native Nations, such as the reviews that occur pursuant to Section 106 of the NHPA,<sup>163</sup> have particular statutory processes. The Commission’s general consultative efforts to date have included the Indian Telecommunications Training Initiatives (ITTI) in 2000 and 2001 and the Indian Telecom Initiatives (ITI) from 2003 to 2010, and have encompassed national and regional conferences, workshops, and roundtables, as well as senior Commission staff participation in Tribal meetings, conferences, and gatherings. We seek comment on the format, frequency, and process for properly engaging with Native Nations in consultation and training efforts. For example, are there particular areas of the Commission’s rules that require training so that Native Nations understand the relevant rules and policies and can engage in a more productive dialogue with the Commission on the effect of those rules and policies on Native Nation interests? What methods of consultation are most effective in training Native Nation participants, while also garnering the participants’ perspectives and opinions?

### L. General Comments on Issues Unique to Native Nations

77. We recognize that this *NOI* may not cover all of the telecommunications and information service challenges that Native Nations and Native communities face. Therefore, in addition to the comments sought in this *NOI*, we invite general comments on other matters involving the provision of communications services to Native communities that may warrant future Commission inquiry or action.

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<sup>161</sup> *National Broadband Plan* at 184, Chapter 9.7.

<sup>162</sup> *Id.*

<sup>163</sup> *See supra* section H of this *NOI*.

#### IV. PROCEDURAL MATTERS

##### A. *Ex Parte* Presentations

78. Section 1.200(a) of the Commission's rules permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires.<sup>164</sup> This proceeding shall be a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>165</sup> Designating this proceeding as "permit-but-disclose" will provide an opportunity for all interested parties to receive notice of the various technical, legal, and policy issues raised in *ex parte* presentations made to the Commission in the course of this proceeding. This will allow interested parties to file responses or rebuttals to proposals made on the record in this proceeding. Accordingly, we find that it is in the public interest to designate this proceeding as "permit-but-disclose."

79. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>166</sup> Other rules pertaining to oral and written presentations are set forth in Section 1.206(b) of the Commission's rules.<sup>167</sup>

##### B. Comment Filing Procedures

80. We invite comment on the issues and questions set forth in the *NOI* contained herein. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>168</sup> interested parties may file comments and reply comments on this *NOI* within 45 days of publication in the Federal Register and may file reply comments within 75 days after publication in the Federal Register. **All filings related to this *NOI* shall refer to CG Docket No. 11-41.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>169</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each individual docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325,

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<sup>164</sup> 47 C.F.R. § 1.1200(a).

<sup>165</sup> 47 C.F.R. §§ 1.1200-1.1216

<sup>166</sup> 47 C.F.R. § 1.206(b)(2).

<sup>167</sup> 47 C.F.R. § 1.1206(b).

<sup>168</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>169</sup> 47 C.F.R. §§ 1.415, 1.419. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th St., SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

81. Because some matters on which we request comment in this Notice may call on parties to disclose proprietary information such as market research and business or technical plans, we suggest that parties consult Section 0.459 of the Commission's rules about the submission of confidential information.<sup>170</sup>

82. Parties must also send a courtesy copy of their filing to Rod Flowers, Office of Native Affairs and Policy, Federal Communications Commission, 445 12th Street, SW, Room 4-C487, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its website: [www.bcpweb.com](http://www.bcpweb.com), by e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

83. Comments and reply comments must include a short and concise summary of the substantive arguments in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules.<sup>171</sup> We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the *NOI* in order to facilitate our internal review process.

84. For further information, contact Cynthia Bryant, 202-418-8164, in the Office of Native Affairs and Policy.

## V. ORDERING CLAUSE

85. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4(i), 4(j), 7(a), 11, 214, 225, 254, 255, 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, 332, 403, 706, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 157(a), 161, 214, 225, 254, 255, 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, 332, 403, 706, and 716, and Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, this Notice of Inquiry is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>170</sup> 47 C.F.R. § 0.459.

<sup>171</sup> See 47 C.F.R. § 1.49.

Marlene H. Dortch  
Secretary

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No. 09-52); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40); Improving Communications Services for Native Nations (CG Docket No. 11-41)*

As we developed the National Broadband Plan last year, we asked Americans to share with us their concerns if broadband wasn't available where they lived. And a woman named Sara from White Swan, Washington wrote us back. She told us:

*With [b]roadband made available here in the rural areas of the Yakama Indian Reservation it would help us out a[l]lot. My [s]ister and I are disabled and do not drive much. . . . Faster internet would help with education needs in our home. . . .*

*The phone co[mpany] keeps telling us [“]soon[”] for broadband[. W]e have seen them upgrade the lines right in front of our home, but [are] still waiting for some type of upgrades to come in to the substation to allow people further out access to broadband.*

Our job here at the Commission is to help turn “soon” into “today.” Because communications services like broadband, wireless communications and radio aren't just valuable as means to deliver entertainment and diversions. They are vital platforms for community-building, cultural preservation, and the promotion of public health, education and economic opportunity in Native Nations.

Native Nations' unique circumstances vary widely – from reservations along the Eastern Seaboard, to Alaska Villages, to the Home Lands of Native Hawaiians – but we also know that many of you share similar visions for how broadband can improve the daily lives of Native Americans. Today's items are about ways to help the leaders of Native Nations achieve those visions for their own communities.

Our first item will help Native Nations preserve their culture, language, and community values by making it easier to deploy rural radio service. This will particularly help Native Nations with small or irregularly shaped lands and non-landed Native Nations provide their citizens with programming that meets their needs and interests.

Our second item, the Spectrum over Tribal Lands NPRM, will create new opportunities for Native Nations to gain access to spectrum and create new incentives for licensees to deploy wireless services on Tribal Lands. We know that there have been lives lost in Native America because of the lack of basic communications services. We know that in the cold of a recent winter, when a car broke down on a reservation in the North Plains and a signal was not available, two young Indian men froze to death. We know that not too long ago in Arizona Indian Country, when a father and family man had a heart attack, his family had too far to travel just to reach a telephone. When emergency services finally arrived, it was too late.

But we *also* know that wireless availability can help bridge these gaps and even save lives. Wireless can make it easier to manage chronic diseases that plague places like Indian Country in Southern Arizona, where over one-third of American Indians over 20 have been diagnosed with diabetes. And so I am hopeful that this item will not just help more people in Native Nations obtain access to wireless, but also in some small way help communities tackle the public health challenges they face today.

And our third item, a Notice of Inquiry on Improving Communications Services for Native Nations, will lay the groundwork for policies that can help Native Nations build economic and educational opportunity for their members on their own sovereign lands.

I've said on many occasions that broadband is indispensable infrastructure for economic growth and job creation. And nowhere is that need more acutely felt than on Tribal lands. The lack of robust broadband services contributes to the challenges each of you face in building strong economies with diverse businesses and development projects. So we seek comment on the best ways to support sustainable broadband deployment, adoption, and digital literacy training on Tribal lands.

Among other important questions, we also ask about opportunities to use communications services to help Native Nations address public safety challenges on Tribal lands, including the broad lack of 911 and E-911 services, and the needs of persons with disabilities. We consider how barriers to entry might be preventing the deployment of satellite services in the most remote parts of Native Nations. And we also begin a new inquiry into the status of Hawaiian Home Lands.

In all these efforts, we look forward to working directly with you and finding the right answers to complex problems, to ensure that our actions are wisely taken and lead to effective solutions in your communities. Because as I said to many of you a year ago at the same NCAI winter conference that many of you have just attended, an important and unique trust relationship exists between the Commission and Native Nations. And that trust relationship has borne fruit today. Several of the items we adopt today grow largely out of ideas and proposals advocated by the Native community, and begin to break down barriers for Native Nations and their governmental entities to enter the communications field themselves. These actions recognize the important role that Native Nations play in planning and delivering services and the genuine potential of Tribal or Native-centric approaches to developing successful service models.

We are committed to honoring your sovereignty and self-determination, and strengthening our nation-to-nation relationships. In that spirit, later today, the Office of Native Affairs and Policy and our Bureaus will be hosting a separate session to engage in a dialogue and listening session with our guests from Native Nations on these items. And because we place a high value on your input and consultative guidance, I am pleased to announce today another action to help us work better together: the establishment of an FCC-Native Nations Broadband Task Force, as recommended by the National Broadband Plan, comprised of leaders from across the Native Nations and senior staff from across the Commission. This Task Force, co-chaired by Geoff Blackwell and a co-chair elected from among the 19 Native Nations representatives on the Task Force, will be a permanent mechanism for this Commission and sovereign Native Nations to work together on a positive policy agenda for communications in Native America.

Thank you again to our honorable guests for coming to the Commission today. Like my colleagues, I look forward to coming to your Nations in person soon, and hope that you will find our afternoon discussions informative and productive.



**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No.09-52); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40); Improving Communications Services for Native Nations (CG Docket No. 11-41)*

Honorable Tribal Leaders, thank you for joining us here at the Federal Communications Commission. This past November, I had the privilege to talk with many of you at the Annual Conference of the National Congress of American Indians in Albuquerque. I brought with me to that meeting Chairman Genachowski's pledge that we would hold this meeting—a Tribal Issues Commission Meeting to focus on the telecommunications and media issues that matter most to Indian Country. It has been a long time in coming, but today we are now moving seriously toward a more comprehensive, consultative and holistic approach to identifying and removing barriers to the deployment and adoption of services on and near Tribal lands.

Providing every person in this country with Twenty-first century communications is the great infrastructure challenge of our time. We cannot afford to leave *any* American behind. That must certainly include the original Americans—Native Americans—so that they, too, can reap the benefits of these enabling communications technologies. On my visits to Indian Country, I have seen first-hand how much harm the lack of telecommunications infrastructure is inflicting on the people living on and near Tribal lands, Alaska Native Villages and Hawaiian Home Lands. In so many places where Native Americans live, poverty endures, unemployment is at levels no society should tolerate, education languishes, and even basic public safety falls far short of what people have a right to expect. Modern telecommunications and ubiquitous media are strangers in much of Indian Country. Even plain old telephone service is at shockingly low levels of penetration—below seventy percent of Native American households, and in some areas far less than that. And we don't even begin to have reliable data on the status of Internet subscribership on Tribal lands. Anecdotally, we know that broadband access on Tribal lands is minimal, and certainly lower than ten percent. It's a national disgrace—and it's hurting us all. While I have seen some marked improvements in some places in Indian Country over the last decade, so much more cries out to be done. There's an old saying: Access denied is opportunity denied. Until Indian Country is connected to a Twenty-first century broadband telecommunications grid, opportunity will pass quicker than a meteor over Indian Country. And the people who live there will only fall farther behind the rest of the country and the rest of the world.

When we created the Office of Native Affairs and Policy last August, I was encouraged that we were on the path to meaningful progress on these challenges. And, I was even more encouraged when my old friend, Geoff Blackwell, was selected to head that office. What a gift he is to this Commission! And we have beefed up, by orders of magnitude, the FCC's resources dedicated to building a better trust relationship with Tribal Governments. Having the structures and people in place, though, won't by itself solve these generations-long and deep-rooted problems. We need a serious commitment on the part of this agency to get the job done—and, with this Chairman and with this Commission, we are finally making that commitment.

But success here can only be the product of our cooperative work together. If the Commission is going to help resolve the challenges you face, it must first understand them. See them. Feel them. We need to hear from you on an ongoing basis about your experiences, your ideas and your priorities to help shape our day-to-day decision making. Tribal Nations are sovereigns within this great country, and the FCC must have your input on the life-changing communications issues that matter most to your communities. I recognize that it can be a challenge to find the resources and that you must target them

appropriately, but I am a believer in the adage that decisions without you are usually not the best decisions for you. Your being here today provides valuable and much-needed input. Similarly, our coming—as a Commission—to Indian Country and other Native areas is equally important in making sure we are all seeing the same challenges and responding to the same sets of facts. I hope we will do that soon—and often.

With the three proceedings we launch today, we have a real opportunity, working together, to identify barriers to the deployment and adoption of communications and media services in Indian Country and to take swift action to remove these barriers. The *Native Nations Notice of Inquiry* highlights the breadth of our examination—from radio to broadband to public safety communications. Specifically, we seek input on whether to expand the Tribal Priority for the allocation and assignment of radio channels to make it easier for Native Nations to provide other services—wireless, wireline and satellite—to their communities. We ask about sustainable broadband models for Indian Country, and the funding needs for deployment, adoption and digital literacy on Tribal lands. Given the unique ways that public safety communications are provisioned in Indian Country, we seek to develop a comprehensive record on the funding, jurisdictional, geographic and other challenges to ensuring that Tribal lands have access to the ubiquitous, effective and high-quality emergency communications they need and deserve. And, for the first time to my knowledge, we ask critically important questions about accessibility barriers for persons living with disabilities on Tribal lands.

Today, we also adopt a *Native Nations Spectrum Notice of Proposed Rulemaking* aimed at promoting greater use of spectrum over Tribal lands. We propose a number of innovative ideas for maximizing the spectrum resource and expanding opportunities for wireless service to Native Americans. Among the proposals, we are looking to expand the Tribal Priority that currently applies to broadcast radio to cover commercial wireless, to require good faith on the part of incumbent wireless licensees in any negotiations for secondary market access to spectrum over Tribal lands, and to incent the building of wireless facilities by applying a safe harbor for construction obligations when a specified level of service on Tribal lands is met. Too often, wireless carriers find that they don't need to cover Tribal lands to meet our far-too-lenient build-out requirements—except, of course, if they happen to want to cover a highway that cuts through the area. I have long believed that we need to apply some degree of a use-it-or-lose-it approach when it comes to the public spectrum resource. That is why I strongly support the build-or-divest process we propose today. Under the proposal, a Tribal Government could initiate a build-or-divest process by giving us notice that it plans to extend coverage over its Tribal lands that are unserved or underserved by licensees of that spectrum and geographic area.

Last, but certainly not least, in the *Rural Radio* item we address the implementation of the Tribal Priority for radio broadcast licensing for those Tribes with very small, irregularly-shaped, or no land holdings. Our policies need to recognize that only 312 of the 564 federally-recognized Tribes occupy reservations, and I am pleased that we have initiated a waiver process to make this priority available for those Tribes. We seek further comment on ways to maximize the benefit of this priority for Tribal entities seeking FM commercial licenses.

There is a truly path-breaking idea presented in the *Rural Radio* item that proposes the use of threshold qualifications as an alternative to the Tribal Bidding Credit. The objective here is to increase opportunities for Tribal entities to own FM broadcast stations to serve their communities. I wish we had developed this idea earlier, but in light of the significant assurances I have received that its consideration will be fast-tracked, I think it may be the idea whose time has come. I am anxiously awaiting commenters' reaction to it. There are far too few radio station licenses in the hands of Native Americans—less than one-third of one percent—and this lack pulls us apart. Media can do much to bring us closer together. Native American interests are a fundamental component of the public interest obligations that this Commission is charged by law to safeguard and advance.

We have a long way yet to go to turn our words into concrete results for Native Americans. And, we are all too aware of earlier times in our shared history when hopes and promises spread across Indian Country, only to be under-cut by a lack of follow-through and, sometimes, by outright deceit. That history was often a trail of tears, and the ground is still damp with the sorrow and hurt that were visited upon generations of Native Americans. Bringing opportunity and prosperity out of that sad history is one of the major challenges confronting our country today. It is time to do justice—real justice—for Indian Country and for us all. Let us move forward together in this new spirit of hope and progress, and let us work, government-to-government, to make sure the results match the promise.

I also want to commend the adoption in the *Rural Radio* item of a rebuttable urbanized area presumption that I believe will help better serve communities and new entrant broadcasters alike. We adopt this item to avoid gaming of our 307(b) preference, which is designed to ensure the fair, efficient and equitable distribution of radio service. I believe strongly that *all* of our communities, large and small, deserve to be served.

I want to thank the Chairman and fellow Commissioners for their constructive engagement on all three items. I commend Geoff Blackwell and his fantastic team in the Office of Native Affairs and Policy for coordinating these items across the Commission, pulling in expertise from throughout the agency. I also thank and commend the Media and Wireless Telecommunications Bureaus for their major role in today's actions. I hope in the future people will look back upon this day as a truly formative, perhaps even historic, day.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No. 09-52); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40); Improving Communications Services for Native Nations (CG Docket No. 11-41)*

Our efforts today are an important part of the Commission's commitment to tribal sovereignty and the federal trust responsibility. I am pleased to support these opportunities to share ideas for helping to promote tribal self-sufficiency and economic development. I thank all of the honorable Tribal and Alaska Native representatives for joining us today. I also hope that this group – the Commission and all of us – will meet again somewhere on Tribal lands and Alaska Native lands.

I'll start with a bit of historical perspective. In May 2008, the Commission adopted a cap on competitive eligible telecommunications carrier access to high-cost universal service support. While controlling the growth of the fund was important, I felt it critical that the Commission include an exception to that cap for all of the providers serving tribes across the country – some of the most overlooked parts of America. This limited exception was designed to ensure that companies operating in these areas will continue to receive high-cost support to provide their services while we move toward permanent comprehensive reform of the Universal Service system. At that time, my colleagues and I pledged to resolve questions regarding the implementation of that proposed exception. I was relieved that we fulfilled that pledge – adopting an order less than a year thereafter.

Back in 2009, I was also pleased to support the First Report and Order in the "Rural Radio" proceeding, which affords a priority under Commission rules to American Indian Tribes, Alaska Native Villages, and tribal consortia, to assist them in obtaining new radio stations designed to serve Tribal and Alaska Native lands. The Second Report and Order before us today is designed to extend that relief to Tribes that lack officially recognized lands, as defined in our First Order, but that nonetheless wish to serve geographically identifiable Tribal populations. Our latest rule change provides for a waiver standard that will allow such Tribes to make a detailed showing specific to their circumstances – and is designed to balance the demonstrable needs of Tribal populations with the needs and interests of the public at large. I support this initiative as well because it aims to fulfill our statutory obligation to provide a "fair, efficient and equitable distribution of radio service" across the nation.

The Second Report and Order in the Rural Radio docket also addresses the "fair, efficient and equitable distribution" issue generally by adjusting the Commission's allotment priorities for *all* radio stations. This set of rule changes will affect proposals for new AM and FM stations, as well as city-of-license changes for existing facilities, by essentially making it presumptively more difficult to add stations to urban markets. Our action today is the latest chapter in a long history of re-adjustments the FCC has made over time in seeking to ensure that all populations – urban, suburban and rural – have access to a number of competing radio stations. Although I have some concerns about how today's decision may affect the long-term financial viability of some stations, I note that the rule changes establish only rebuttable presumptions, not blanket bans, concerning the location of stations. I will be watching with interest to see how reasonably flexible the revised approach turns out to be.

And although I am pleased that we are grandfathering some of the pending applications for new facilities under the old prioritization standard, I would have gone further to extend the same treatment to all applications on file as of today. Not every pending FCC application merits protection from rule changes that may occur before agency action on the individual adjudication, of course. A change of this magnitude, however, warrants special consideration because it affects nearly 30 years of precedent that

afforded licensees greater scope to make market-driven judgments.

Regarding the Notice of Inquiry, I am particularly encouraged that we seek to identify Commission rules that are currently barriers to the provision of service on Tribal Lands. If we identify particular rules during the comment cycle, I hope that we take a serious look at reviewing the reasons behind those rules in a timely manner and move forward in removing unnecessary barriers where appropriate.

Thank you to the staff of the multiple bureaus who contributed to these proceedings. I recognize Geoff Blackwell for his leadership in not only shepherding through these proposals today but for his tireless work here at the Commission overall as well. He is helping to ensure that Native Americans and Alaska Natives have a voice not just within these proceedings but at the Commission in general.

We obviously still have much to accomplish in this area. This is especially true as America transitions to a new broadband era. As we constantly push forward, I look forward to working with all of you, my colleagues here at the Commission, and other stakeholders to fulfill our commitments.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No.09-52); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40); Improving Communications Services for Native Nations (CG Docket No. 11-41)*

I am also pleased to welcome the Native Nation leaders to this morning's meeting. For far too long, we have not engaged in an appropriate examination of the unique challenges on Native Nation lands. We have known, since at least the 2000 decennial census, that only 68 percent of households on Tribal lands in the lower 48 have basic wireline telephone service, while the national rate stands at 98 percent.

I was excited to see how much attention the National Broadband Plan devoted to attempting to address the many issues that contribute to the lack of communications infrastructure and services on Tribal lands. Although the challenges to deployment of communications infrastructure on Tribal lands are difficult, not trying to resolve them, only makes the job harder and the digital divide wider. The available studies show, that less than 10% of residents on Tribal lands, have access to terrestrial broadband networks. The main import of the National Broadband Plan's recommendations for Tribal lands, and the items we adopt today, is that we will be stronger, when all of our communities can leverage broadband, to contribute to our Nation's overall well-being. By adopting these three items, this Commission sends the message, that if we are serious about ensuring, that all Americans have access to emerging services and technologies, we must make the concerns of historically underserved communities, such as Native Nations, a top policy priority.

Furthermore, this Commission has a historic trust relationship with federally recognized Tribes. To properly fulfill our fiduciary responsibility to people living on Tribal lands, we must do more. We must commit to taking new approaches for those lands where past regulatory approaches have not worked.

Geoffrey Blackwell, and the FCC staff members who worked on these three items, have crafted a thoughtful strategy, to find solutions to the most difficult barriers to deployment and adoption on Tribal lands. With regard to those initiatives the Tribes have been seeking for years, and for which we have a developed a sufficient record, such as access to broadcast and wireless spectrum, we should strive to adopt rules as soon as possible.

I truly enjoyed working with Geoff and his team, as well as our Media Bureau, on further improving radio coverage, availability, and ownership in America's Tribal areas. I was startled to learn that 0.3 percent of the 13,000 radio facilities in this country, belong to recognized Tribes, and I applaud the Commission for addressing this disparity head-on and taking significant strides toward improvement.

Our actions, today, will serve to encourage Tribes and individuals to venture into broadcasting in order to inform and entertain their peers and neighbors, and the lack of significant broadcasting experience, will no longer be the imposing brick wall, that it once was. We are well aware of the prohibitive costs that so often keep vital and intelligent voices off the air. The threshold language in this item offers a solution to that omnipresent problem, via our strong steps toward a Tribal priority. This proceeding demonstrates that there is still a paramount and urgent need, for the Commission to ensure that licensees are meeting the needs of their service communities, and I am proud of our Bureaus for taking proactive measures to address this issue.



The wireless spectrum NPRM proposes a number of exciting new initiatives to improve the rate of wireless service coverage on Tribal lands. Notably, the Licensing Priority would allow Tribal entities to acquire valuable spectrum without an auction. Since only 10 percent of people living on Tribal lands have access to broadband networks, I am interested in creative ideas, about how we can ensure that all Tribal entities are properly informed about this opportunity. I am also pleased to see the multi-faceted approach the NPRM takes, to creating incentives for wireless licensees, to do a better job of serving people living on Tribal lands. Hopefully, the proposed Construction Safe Harbor and modifications to the Land Bidding Credit Program will encourage more entities to use their wireless licenses to serve Tribal lands.

Since we have heard that there are some licensees who have been reluctant to enter into secondary market arrangements with Tribes, it is time for the Commission to consider a process that would bring these licensees to the negotiating table. Also creative is the build-or-divest proposal, which should urge more licensees to deploy wireless networks on Tribal lands. Furthermore, it shows that this Commission is committed to allowing Tribal entities to take an active role in encouraging licensees to help them address their wireless needs. This goes a long way to improve our agency's government-to-government relationship with recognized Tribes.

Our Native Nations NOI sets forth a number of other proposals to allow for a more productive, consultative process, with Native Nations -- something I fully support. First, it is of paramount importance, that the Commission work with Native Nations, to identify successful deployment of communications infrastructure and services. Second, we should do all we can to encourage the replication of those successes on Tribal Lands. We owe all of our citizens, the benefits of a fully connected community, in order to promote public safety, education, and the economic development on Tribal Lands. Access to 9-1-1, and other public safety services, is critical to every American no matter their location. Likewise, broadband service to anchor institutions and residential areas is beneficial to our entire Nation. Thus, we must engage with our Native Nations, to ensure that they too benefit from a fully connected society.

I want to express my sincere gratitude to Commissioner Copps for his relentless efforts in shining the spotlight on the difficulties Native Nations face. Today, thanks to the leadership of Chairman Genachowski, the FCC is giving those difficulties the attention they have long deserved. We must not leave our Native Nations behind.

**STATEMENT OF  
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No. 09-52); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40); Improving Communications Services for Native Nations (CG Docket No. 11-41)*

There is no dispute that the communications needs facing Tribal nations are great. Communications services that many take for granted—something as simple as a dial tone, bars on a mobile phone, and the most basic access to the Internet—are just missing in many areas. The statistics are staggering, with some estimates putting the broadband adoption rate as low as five percent in some parts of Indian Country. When there is Internet access, it is estimated that over 90% of individuals in Tribal communities utilize the Internet at least once a day, much greater than the national average. And for that access, individuals in Tribal lands pay more on average: only 9% pay under \$20 per month for Internet access in Indian Country, compared to 18% nationally, while 11% pay between \$61 and \$80 per month for Internet access, compared to only 1% nationally.

The Commission has recognized these problems repeatedly over the last decade. In a 2000 Policy Statement on our government-to-government relationship with Indian Tribes, the Commission committed at that time to work with the Tribal communities to ensure “that Indian Tribes have adequate access to communications services.” Fast forward to Acting Chairman Copps’ 2009 report, “Bringing Broadband to Rural America,” and the Commission again recognized the “unique issues” associated with broadband deployment in Tribal lands. And most recently in the National Broadband Plan—fast approaching its first birthday—we recognized the need “to support sustainable broadband deployment and adoption in Tribal lands.” Yet we still have Native American communities with the lowest adoption rates in the country, and we are still talking about the problems without proposing any real solutions.

It is time for action, and I hope that includes leaving the confines of the Beltway to hear directly from the people impacted by this digital divide. Given the many different groups represented here today, I am certain there is no one-size-fits-all solution. I commit to consulting directly with the people of the Tribal nations as to how we can best help them, whether it’s by encouraging the deployment of fixed and mobile broadband or promoting adoption and digital literacy.

I am pleased to see the efforts of so many of our Bureaus and Offices, under the guidance and leadership of Geoff Blackwell and the Office of Native Affairs and Policy, to formulate a coordinated framework under which we can proceed. I hope that these proceedings that we initiate today lead to actual, measurable progress in addressing the communications and technology gaps facing Tribal nations.